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SOUTHERN DISTRICT OF NEW YORK

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In re	)	Chapter 11
	)	
TRONOX INCORPORATED, <i>et al.</i> ,	)	Case No. 09-10156 (ALG)
	)	
Debtors.	)	Jointly Administered
TRONOX INCORPORATED, TRONOX WORLDWIDE	)	
LLC f/k/a Kerr-McGee Chemical Worldwide LLC, and	)	
TRONOX LLC f/k/a Kerr-McGee Chemical LLC,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
ANADARKO PETROLEUM CORPORATION	)	Adv. Pro. No. 09-01198 (ALG)
and KERR-MCGEE CORPORATION, KERR-MCGEE OIL	)	
& GAS CORPORATION, KERR-MCGEE WORLDWIDE	)	
CORPORATION, KERR-MCGEE INVESTMENT	)	
CORPORATION, KERR-MCGEE CREDIT LLC, KERR-	)	
MCGEE SHARED SERVICES COMPANY LLC, and	)	
KERR-MCGEE STORED POWER COMPANY LLC,	)	
	)	
Defendants.	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor,	)	
v.	)	
	)	
TRONOX, INC., TRONOX WORLDWIDE LLC, TRONOX	)	
LLC, KERR-MCGEE CORPORATION and ANADARKO	)	
PETROLEUM CORPORATION,	)	
	)	
Defendants.	)	

**DEFENDANTS' BRIEF ON CERTAIN OBJECTIONS TO  
DESIGNATIONS FROM THE VIDEOTAPED DEPOSITION OF ROGER ADDISON**

TO THE HONORABLE ALLAN L. GROPPER,  
UNITED STATES BANKRUPTCY JUDGE:

Plaintiffs have indicated that they intend to play the video deposition of Roger Addison (“Addison”) at trial. Addison served as Tronox, Inc.’s General Counsel from the time of the IPO in 2005 until November 2007. In November 2007, Addison voluntarily retired from the role of Tronox’s General Counsel but remained with Tronox for a period of time as a consultant.

Plaintiffs have designated approximately 375 pages of Addison’s deposition testimony for submission to the Court. Of this testimony, Plaintiffs seek to play approximately two hours worth of video testimony live at trial. A considerable amount of the “testimony” Plaintiffs submitted to the Court (equating to many hours), as well as much of the testimony that they seek to play live in the courtroom, should be excluded because it is inadmissible speculation about topics on which Addison himself admits he has zero personal knowledge. Instead of simply relying on the testimony of the witnesses who do have personal knowledge on these topics, Plaintiffs seek to create a misleading record by effectively having Tronox’s attorneys testify through their questions to Tronox’s former General Counsel—who has no personal knowledge about those documents or their contents—as to what they would like to argue is the meaning or import of certain documents.

As to certain issues where Addison *can* offer competent testimony—for example, statements made by Plaintiffs former management team—Plaintiffs lodge hearsay objections. The Federal Rules of Evidence, however, do not support Plaintiffs’ objections and, in fact, specifically permit Addison’s testimony on these issues.

Ruling on these objections prior to playing the video live in the Court will avoid the cumbersome and wasteful process of stopping the deposition video each time an objection is

lodged, proceeding with arguments on those objections mid-trial, obtaining a ruling from the Court, and re-editing the video in the courtroom on-the-fly based on the Court's ruling. There is no need for such a wasteful process when such matters are more efficiently handled in advance of trial.

### **BACKGROUND**

Addison served as Tronox's General Counsel from just before the IPO in September 2005<sup>1</sup> until November 2007, when he voluntarily retired.<sup>2</sup> After his retirement, Tronox engaged Addison to stay on with the company as a consultant for a period of approximately six months.<sup>3</sup> In his role as a consultant, Addison reported to Tronox's current general counsel, Michael Foster.<sup>4</sup> From 1977 until Tronox's IPO, Addison was employed as an in-house counsel with Kerr-McGee.<sup>5</sup> While at Kerr-McGee, Addison devoted "most of [his] attention to [the] Chemical Business since 1988."<sup>6</sup> In fact, from 2001 until the 2005 IPO, Addison served as the division counsel for the Chemical Division.<sup>7</sup>

*After* Plaintiffs filed their complaint in this lawsuit, Plaintiffs' counsel interviewed Addison regarding the allegations they had made against Kerr-McGee and Anadarko.<sup>8</sup> Addison told Tronox's counsel that, based on his years as Tronox's General Counsel and as a Kerr-McGee in-house lawyer where he devoted most of his attention to the Chemical Division, the

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<sup>1</sup> R. Addison Dep., 16:13-19, July 13, 2010, attached as Ex. A.

<sup>2</sup> *Id.* at 38:25-39:16.

<sup>3</sup> *Id.* at 42:8-17.

<sup>4</sup> *Id.* at 42:18-20.

<sup>5</sup> *Id.* at 15:3-6; 16:2-7.

<sup>6</sup> *Id.* at 22:19-23:11.

<sup>7</sup> *Id.* at 18:2-6; 29:15-30:5.

<sup>8</sup> *Id.* at 49:14-21; 50:1-23.

allegations and claims asserted in the complaint were inconsistent with the truthful facts that he personally witnessed.<sup>9</sup> Counsel for Plaintiffs then warned Addison that “[y]ou’re either with us or you’re against us.”<sup>10</sup>

After issuing this warning, Tronox deposed Addison over a three-day period for approximately 500 pages of examination. Plaintiffs spent the bulk of his deposition questioning him on the contents of documents about which Addison testified he has no personal knowledge. As a result, a substantial amount of Addison’s testimony being proffered by Plaintiffs is pure speculation on topics about which Addison is not competent to testify.

In particular, Plaintiffs elicited testimony from Addison about three different sets of documents of which he admittedly has no personal knowledge and had never even seen before his deposition. These documents are categorized and referred to in this motion as (1) the Lehman Documents; (2) the Simpson Thacher Documents; and (3) the B.J. Montgomery Document. Further, Plaintiffs repeatedly questioned Addison about the specifics and details of an internal reorganization undertaken by Kerr-McGee in 2002 after Kerr-McGee’s acquisition of a company named HS Resources, even though Addison testified that he had “very, very little involvement” with Project Focus and did not spend much time on it.<sup>11</sup>

The egregiousness of Plaintiffs’ effort to use Addison to testify about these documents becomes apparent when the Court considers that Plaintiffs deposed the individuals who actually drafted, prepared, and/or have personal knowledge about the documents. For instance, Plaintiffs deposed Chris Watson, formerly of Lehman Brothers, about the Lehman Documents over a period of three days. Likewise, Plaintiff deposed Peter Gordon from Simpson Thacher about the

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<sup>9</sup> *Id.* at 50:1-19.

<sup>10</sup> *Id.* at 51:3-24.

<sup>11</sup> *Id.* at 285:14-23.

Simpson Thacher Documents. And Plaintiffs deposed B.J. Montgomery regarding his document. Thus, Plaintiffs have the testimony of the individuals with actual personal knowledge about all of the subject categories and topics. Therefore, there is no evidentiary value in the testimony from Tronox's own former General Counsel on topics and documents about which he admitted he has no personal knowledge.<sup>12</sup>

Plaintiffs' also make various meritless objections to the testimony of Addison designated by Defendants, one of which warrants mention here. Specifically, Plaintiffs object to Addison's testimony about what two officers or executives of one of the Tronox Plaintiff entities told him about the rationale for acquiring certain chemical businesses. Plaintiffs' hearsay objections to that testimony should be overruled because the statements were made by officers or management of Plaintiffs while acting within the scope of their broad authority. As a result, under Federal Rule of Evidence 801(d)(2)(D) their statements to Addison, who was a primary in-house lawyer that worked on these acquisitions with Plaintiffs' management, are "opposing party statements," not hearsay.

**I. ADDISON'S TESTIMONY ABOUT THE LEHMAN, SIMPSON THACHER, AND B. J. MONTGOMERY DOCUMENTS, AND THE DETAILS OF PROJECT FOCUS, IS INADMISSIBLE BECAUSE HE LACKS THE PERSONAL KNOWLEDGE ABOUT THOSE TOPICS THAT FEDERAL RULE OF EVIDENCE 602 REQUIRES.<sup>13</sup>**

Under Federal Rule of Evidence 602, a witness may testify to a matter *only* if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.<sup>14</sup> Thus, where a witness lacks personal knowledge, he is not competent to testify to the

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<sup>12</sup> A complete list of Defendants' objections to Plaintiffs' proffered deposition testimony of Addison has been filed with the Court separately.

<sup>13</sup> Defendants also object to much of this same testimony on the basis of lack of foundation and speculation.

<sup>14</sup> FED. R. EVID. 602; *D.M. Rothman & Co., Inc. v. Korea Commercial Bank of New York*, 411 F.3d 90, 97 (2d Cir. 2005) ("[U]nder the Federal Rules of Evidence witnesses may testify only as to matters within their

matter.<sup>15</sup> Similarly, when the witness lacks personal knowledge about a document, he is not competent to testify about the document.<sup>16</sup> Such is the case with the Lehman Documents, the Simpson Thacher Documents, and the B.J. Montgomery Document because Addison specifically and expressly testified he has no personal knowledge about those documents and had never even seen them before his deposition.

**A. The Lehman Documents: Addison Exhibits 14, 15, and 16**

Addison Exhibits 14, 15, and 16 are Lehman Brothers pitch books relating to a Project Titan, dated September 2000, January 2001, and April 2001, respectively.<sup>17</sup> Plaintiffs designated considerable testimony from Addison regarding these documents and their substance (*i.e.*, Project Titan). Addison, however, unequivocally testified that he never saw those exhibits until his deposition, and that he has no personal knowledge whatsoever regarding them or their contents:

Q: You recognize these to be what Tronox's counsel represented to you to be Lehman Brother documents from – Addison 14, September 7, 2000; Addison 15, January 1st, 2001; and Addison 16, April 16, 2001; correct?

A: Yes.<sup>18</sup>

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personal knowledge.”); *Brown v. Keane*, 355 F.3d 82, 90 (2d Cir. 2004) (citing FRE 602 and stating, “[i]t is one of the most basic requirements of the law of evidence that a witness’s report may be admitted only where grounds exist for ‘a finding that the witness has personal knowledge of the matter.’”).

<sup>15</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90.

<sup>16</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90; *Kern v. Levolor Lorentzen, Inc.*, 899 F.2d 772, 780-81 (9th Cir. 1990) (former employer’s personnel manager was not competent to testify in wrongful termination action about letter that was written to former employee before manager worked for company); *Belber v. Lipson*, 905 F.2d 549, 552 (1st Cir. 1990) (physician who has no personal knowledge of records allegedly prepared by original treating physician was not competent to testify that records were business records).

<sup>17</sup> See Addison Exs. 14, 15, and 16, filed separately with the Court.

<sup>18</sup> R. Addison Dep., 790:20-25, July 15, 2010, attached as Ex. C.

\* \* \*

Q: *We can sort of short circuit this. You have no personal knowledge about anything regarding exhibits –*

A: *I never saw them before today.*

Q: *–Addison 14, 15, and 16; correct?*

A: *Was it Tuesday? I have never seen them before, that I know, that I recall.*

Q: *As a result of the—so you had no—you have no personal knowledge regarding Adams [sic] 14, 15, or 16 in any way whatsoever other than that you saw them for the first time on Tuesday of this week; correct?*

A: *That's what I'm testifying, yes.*<sup>19</sup>

Despite Addison's complete lack of knowledge of the Lehman Documents (Addison Exhibits 14-16), Plaintiffs questioned him extensively (for over 30 pages) about them and the substance of their contents in an attempt to establish, based on the mere reading of selectively excerpted portions of the Lehman Documents, that Lehman Brothers provided certain advice, representations, or statements related to Kerr-McGee:

Q. Lehman Brothers was also telling Kerr-McGee in January of 2001 that a, quote/unquote, pure play E&P should trade at a higher multiple than Kerr-McGee today.

Do you see that?

A. Yes.<sup>20</sup>

\* \* \*

Q. If you look at the third bullet, in January of 2001 Lehman Brothers was telling Kerr-McGee that the legacy liabilities with chemicals and discontinued operations was a structural

<sup>19</sup> *Id.* at 792:15-793:3 (emphasis added) (objections omitted).

<sup>20</sup> R. Addison Dep., 244:8-13, July 13, 2010, attached as Ex. A.

consideration that Kerr-McGee needed to think about;  
correct?

A. Well, in PowerPoint speak I think that's what the bullet  
[p]oint suggests, yes.<sup>21</sup>

\* \* \*

Q. If you look at slide I-11, executive summary range of  
strategic alternatives. It ends with Bates number 893 –

A. Yes.

Q. -- you'll notice that Lehman Brothers was telling Kerr-  
McGee that after looking at a number of strategic  
alternatives, they narrowed the list down to three options;  
right?

A. That is what it says.<sup>22</sup>

Addison's testimony about what presentations, advice, or representations Lehman did or  
did not give to Kerr-McGee should be excluded because Addison has no personal knowledge of  
anything about Exhibits 14, 15, and 16 or their substance, rendering his testimony inadmissible.<sup>23</sup>  
In fact, Addison admitted that his "testimony" relating to these documents consisted of nothing  
more than Plaintiffs' counsel reading words on the documents and asking Addison if those were  
the words written:

Q: So any time Tronox's counsel asked you in any of his  
questions based on these documents that Lehman Brothers  
was recommending or pointing out or highlighting or  
concluding certain things, you were merely reading what he  
was pointing you to in these documents; correct?

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<sup>21</sup> *Id.* at 245:20-246:2.

<sup>22</sup> *Id.* at 258:19-259:2.

<sup>23</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90; *Kern*, 899 F.2d at 780-81; *Belber*, 905 F.2d at 552. In addition to the fact that Addison had no personal knowledge on the topics, much of the testimony Plaintiffs seek to admit also is inadmissible because it is speculation and lacks foundation.



A: Yeah. Essentially, yes. He was pointing out certain sections and reading them and asking me if that's what I saw or what it said and I would agree what it was.<sup>24</sup>

There is no basis to allow Tronox's former General Counsel, who has no personal knowledge about the Lehman Documents, to speculate about them, especially when the individuals who do have personal knowledge about the documents have been deposed.<sup>25</sup> Specifically, Plaintiffs have deposed Chris Watson, formerly of Lehman Brothers, as well as Kerr-McGree former executives, who have personal knowledge regarding the Lehman Documents and their contents. Plaintiffs even have designated for submission to the Court testimony from these depositions. As a result, precluding Addison from speculating about the Lehman Documents will not prevent testimony on them; it will merely ensure that testimony about the documents comes from the people with personal knowledge about them.

**B. The Simpson Thacher Documents: Addison Exhibits 13, 18, and 22**

Addison Exhibits 13, 18, and 22 are draft memoranda from the Simpson Thacher & Bartlett LLP law firm.<sup>26</sup> Plaintiffs designated considerable testimony from Addison regarding these documents and their substance. Again, Addison testified that he never saw Exhibits 13, 18, or 22 until his deposition, and that he has no personal knowledge whatsoever about them:

Q: I just want to be sure. Your testimony—when I referred to “your testimony,” *your testimony in this deposition regarding these documents was not based on your personal knowledge* but it was instead based on you reading the selected excerpts of the Exhibits Addison 13, 22 and 18 that Tronox's counsel pointed out to you?

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<sup>24</sup> R. Addison Dep., 793:4-16, July 15, 2010 (objections omitted), attached as Ex. C.

<sup>25</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90; *Kern*, 899 F.2d at 780-81; *Belber*, 905 F.2d at 552.

<sup>26</sup> See Addison Exs. 13, 18, and 22, filed separately with the Court.

A: *Yes, I testified and I still believe I had never seen these documents before.*<sup>27</sup>

Despite his complete lack of knowledge of Addison Exhibits 13, 18, and 22, during his deposition Plaintiffs questioned Addison about them extensively, mostly by characterizing or mischaracterizing what was on the page and having Addison agree with what was written on the pages of the document. For instance, Plaintiffs asked Addison to compare Exhibit 13 to a different exhibit—Exhibit 11—and draw conclusions based on Exhibit 13. Specifically, Plaintiffs asked Addison to compare a task discussed in Exhibit 13 (which he had never before seen) with a task discussed in Exhibit 11 and conclude—with no prior knowledge of Exhibit 13—that an action item listed in Exhibit 11 was actually derived from Exhibit 13:

Q: (BY MR. KASSOF): And if you go to -- under 1-B-2 on [Exhibit 13] *that you didn't get* in 2001, the movement of allocation of assets or liabilities, you see that the entry says "Verify that no assets or liabilities currently held by Spinco need to be moved to Kerr-McGee and vice versa." Do you see that?

MR. BILLECK: Object to the form.

A: *This is what it says,* yes.<sup>28</sup>

\* \* \*

Q: *And no one told you, at the time that you got this, that this task that was identified in Project Focus in 2002 actually was first derived to be a task under a proposed spinoff of Project Titan, the Chemical operations; correct?*

MR. BILLECK: Objection, form.

A: I certainly never heard of it. *No one explained that to me.*<sup>29</sup>

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<sup>27</sup> R. Addison Dep., 797:1-13, July 15, 2010 (emphasis added) (objections omitted), attached as Ex. C.

<sup>28</sup> R. Addison Dep., 228:8-16, July 13, 2010 (emphasis added), attached as Ex. A.

<sup>29</sup> *Id.* at 228:24-229:6.

Similarly, with regard to Addison Exhibit 18, Plaintiffs attempted to use Addison's reading of words on a never-before-seen document as affirmative testimony about that document's meaning:

Q: And then the next bullet [on Exhibit 18] says -- has a reference to how to effectuate a straight spinoff of Titan, the Chemical business, and how to effectuate that; right?

MR. BILLECK: Objection, form.

A: That's what it seems to show, yes.<sup>30</sup>

But Addison's testimony about the Simpson Thacher Documents and what, if anything, they mean or are referring to should not be allowed because he has no personal knowledge of the documents or their contents. As Addison admitted, he was merely reading specific words on the page of a document he has no personal knowledge about and that he had never seen before his deposition:

Q: With respect to these Exhibits 13, 22 and 18, you had *no personal knowledge* regarding these documents or their contents prior to your testimony in this lawsuit this week; correct?

A: That is *correct*.

Q: And your *testimony* in this lawsuit was based *not on personal knowledge* but instead on reading the excerpted portions of the documents that Tronox's counsel pointed you to; correct?

A: I think, yes.<sup>31</sup>

Again, there is no basis to allow Tronox's former General Counsel, who has no personal knowledge about these documents, to speculate regarding them when the individuals with

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<sup>30</sup> *Id.* at 287:2-8.

<sup>31</sup> R. Addison Dep., 796:12-25, July 15, 2010 (emphasis added) (objection omitted), attached as Ex. C.

personal knowledge also have been deposed.<sup>32</sup> Specifically, Plaintiffs deposed Peter Gordon from Simpson Thacher, as well as Kerr-McGee former executives, who have personal knowledge regarding the Simpson Thacher Documents and their contents. Plaintiffs even have designated for submission to the Court testimony from those depositions. As a result, preventing Addison from speculating about the Simpson Thacher Documents will not prevent testimony about them; it will merely ensure that testimony about the Simpson Thacher Documents comes from people with personal knowledge of them and who are competent to testify on the topic.

**C. The B. J. Montgomery Document: Addison Exhibit 30**

Addison Exhibit 30 is an unsigned memo or letter from B.J. Montgomery to Peter Nickels titled "Re: Summary of Kerr McGee Claims."<sup>33</sup> Again, Addison testified that he never saw Exhibit 30 until his deposition, and that he has no personal knowledge of it:

Q: Okay. Let's look at Exhibit 30.

Do you have it?

A: Yes, I do.

Q: Do you recognize this to be an unsigned -- it appears to be a letter of some sort by B. J. Montgomery.

A: This appears to be an e-mail or something from -- to Peter Nichols from B. J. Montgomery.

Q: *And prior to your deposition in this lawsuit this week, you had never seen Addison Exhibit 30; correct?*

A: Even though I was heavily involved in the arbitration claim, [to] which [it] relates, *I don't recall ever having seen this before this deposition.*

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<sup>32</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90; *Kern*, 899 F.2d at 780-81; *Belber*, 905 F.2d at 552.

<sup>33</sup> See Addison Exhibit 30, filed separately with the Court.

Q: And you have *no personal knowledge* of whether B. J. Montgomery actually drafted this document or not?

A: No, I don't know that he did or not.

Q: You have *no personal knowledge* as to whether or not these were the opinions or conclusions or beliefs held by B. J. Montgomery; correct?

A: I don't think he ever confirmed to it personally and I don't recall ever speaking with him about this.<sup>34</sup>

\* \* \*

Q: So *you do not have any personal knowledge* as to whether B. J. Montgomery holds the opinions or conclusions contained in Addison Exhibit 30; correct?

A: I'm going to say yes.<sup>35</sup>

Despite his complete lack of knowledge of Addison Exhibit 30, during his deposition Plaintiffs extensively questioned Addison about it. For example:

Q: And he said: "I met with Rob Roberts, Bob Scanlon and Graham Harcourt to get a feel for how the place was being operated. I specifically asked about any problems with OSHA. Roberts and Scanlon told me that OSHA pretty much left them alone. There were two Hispanics named Santiago and Sanchez as OSHA reps in the area. I spent a lot of time walking around the chloride plant that week and noted that either Kemira was lying or Santiago and Sanchez must be blind."

Do you see that?

MR. BILLECK: Objection to form.

THE WITNESS: Yes. *I see that language.*

Q: And this is the -- Mr. Montgomery indicating to Mr. Nickles what he noticed before closing; true?

MR. BILLECK: Objection to form.

<sup>34</sup> R. Addison Dep., 798:14-799:16, July 15, 2010 (emphasis added), attached as Ex. C.

<sup>35</sup> *Id.* at 800:4-8.

A: Yes. *It certainly appears to say that.*<sup>36</sup>

\* \* \*

Q: Another point that Mr. Montgomery noted to Mr. Nickles that Kerr-McGee identified prior to closing; correct?

MR. BILLECK: Objection to form.

A: That's what this says. Yes.<sup>37</sup>

Such testimony amounts to nothing more than a witness reading from a document of which he has no personal knowledge. As a result, Addison's testimony about the B.J. Montgomery Document should not be allowed because he has no personal knowledge of the document, and his testimony regarding what point Mr. Montgomery noted, or did not note, to Mr. Nickles is pure speculation.<sup>38</sup>

Further, Plaintiffs have deposed both Mr. Nickles and Mr. Montgomery in this lawsuit—the alleged sender and recipient of the document. Indeed, Plaintiffs have designated testimony for submission in this trial from the depositions of both Mr. Nickles and Mr. Montgomery. There is no basis to allow Tronox's former General Counsel, who has no personal knowledge on the B.J. Montgomery Document, to speculate about it when the individuals who do have personal knowledge also have been deposed.<sup>39</sup> Preventing Addison from speculating on the B.J. Montgomery Document will not prevent testimony on the document; it will merely ensure that the testimony comes from people with personal knowledge who are competent to testify on the topic.

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<sup>36</sup> R. Addison Dep., 357:5-22, July 14, 2010 (emphasis added), attached as Ex. B.

<sup>37</sup> *Id.* at 359:12-16.

<sup>38</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90; *Kern*, 899 F.2d at 780-81; *Belber*, 905 F.2d at 552.

<sup>39</sup> FED. R. EVID. 602; *D.M. Rothman*, 411 F.3d at 97; *Brown*, 355 F.3d at 90; *Kern*, 899 F.2d at 780-81; *Belber*, 905 F.2d at 552.

**D. The Specific Details Regarding Project Focus**

Plaintiffs spent considerable time questioning Addison about specific aspects of the 2002 internal reorganization at Kerr-McGee that was referred to as Project Focus. Specifically, Plaintiffs repeatedly asked Addison about the specifics of Project Focus, to which Addison would oblige Plaintiffs' counsel by generally saying he had no reason to disagree with the "questions" from Plaintiffs' counsel:

Q. Right. And it's all consistent with the work that was undertaken at Kerr-McGee in 2002 under Project Focus; right?

A. I have no reason to disagree.<sup>40</sup>

\* \* \*

Q. Okay. That's also consistent with the work that Kerr-McGee did in – under Project Focus; right?

A. You know, I really don't know. It makes sense, though.<sup>41</sup>

But as Addison testified, he had very little involvement in Project Focus and did not really spend any time on it:

Q. And we're in – just again to orient ourselves on the time line, we're in July 2002, which is smack dab in the middle of Project Focus, right, which lasted from January 2002 through – well, at least the closing – I'll put that in quotes – was December 31, 2002, right?

A. I think so.

Q. And this is –

A. *You keep asking me about Project Focus. My recollection is, I had – even though I got these memos, I had very, very little involvement.* It was primarily Dwayne Morris.

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<sup>40</sup> R. Addison Dep., 217:8-11, July 13, 2010, attached as Ex. A.

<sup>41</sup> *Id.* at 217:20-23.

This was the time I was moving from business transactions to the Chemical Division assistant general counsel and was tasked with trying to sell some assets there. *I'd get copied in on this stuff but did not spend much time or investment or intellectual curiosity at all in it.*<sup>42</sup>

Addison cannot be used by Plaintiffs' counsel as a mouth piece to agree with their questions when he admits he lacks personal knowledge upon which to basis his answers. Again, Plaintiffs have deposed individuals who actually were involved with and knowledgeable about Project Focus, including Peter Gordon from Simpson Thatcher. As a result, Defendants' objections to the testimony Plaintiffs' designated from Addison regarding the specific details of Project Focus should be sustained and the testimony excluded.

**II. PLAINTIFFS' OBJECTIONS TO ADDISON'S TESTIMONY ABOUT WHAT PETE WOODWARD AND JOE FLAKE TOLD HIM SHOULD BE OVERRULED BECAUSE THEY ARE STATEMENTS OF AN OPPOSING PARTY.**

Claiming hearsay, Plaintiffs object to Addison's testimony about what two executives or management of Plaintiffs - Pete Woodward and Joe Flake - told him about the rationale for making certain acquisitions. For example, Plaintiffs object to the following testimony as hearsay:

- Q. Did Pete Woodward explain to you why he was a proponent of the Kemira acquisition?
- A. Yeah. He and Joe Flake were both proponents. I'm not sure I can keep them separate. It's almost like they were jointly for it, very much so.
- Q. Why did you understand Mr. Woodward and Mr. Flake to be big proponents jointly in favor of completing the Kemira acquisition?
- A. They were very high on the potential of its titanium dioxide, TiO<sub>2</sub> business, and this would increase their market share and give them economies of scale. I think

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<sup>42</sup> *Id.* at 285:6-23. (emphasis added).



they thought it would be very, very good for Kerr-McGee Chemical.

I think they would become second or third largest and able to better compete with DUPONT, who was the largest.<sup>43</sup>

Plaintiffs broadly objected as hearsay to this testimony of Plaintiffs' former General Counsel explaining what Plaintiffs' former management and executives said as to why they so strongly wanted to acquire Kemira. But an opposing party's statement is never hearsay.<sup>44</sup>

Under Federal Rule of Evidence 801(d)(2)(D), a statement is an "opposing party's statement," and not hearsay, if it is offered against an opposing party and was made by the party's agent or employee on a matter within the scope of that relationship and while it existed.<sup>45</sup> Woodward's and Flake's statements to Addison fall well within the scope of Rule 801(d)(2)(D). First, both Woodward and Flake were part of Plaintiffs' management team. Specifically, from 1997 through September 17, 2004, Woodward was President of Plaintiff Kerr-McGee Chemical LLC (k/n/a Tronox LLC) and Kerr-McGee Chemical Worldwide LLC (n/k/a Tronox WorldWide LLC)<sup>46</sup> And Flake was head of Kerr-McGee's Chemical business development.<sup>47</sup> Thus, the statements Woodward and Flake made to Addison were made by agents of Plaintiffs in the course and scope of their duties as Plaintiffs' management in acquiring the Kemira chemical plants. As a result, these are statements of an opposing party and, therefore, not hearsay.<sup>48</sup>

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<sup>43</sup> *Id.* at. 96:15-97:6; *see also id.* at 94:24-95:9 ("My understanding--this is from discussions with Pete Woodward and Joe Flake . . .").

<sup>44</sup> FED. R. EVID. 801(d)(2).

<sup>45</sup> FED. R. EVID. 801(d)(2)(D).

<sup>46</sup> R. Addison Dep. Ex. 2, Witness Statement of W.P. "Pete" Woodward, attached as Ex. D; *see also* R. Addison Dep. 82:4-11, July 13, 2010, attached as Ex. A (testifying that Woodward's title was vice president of Kerr-McGee for chemical operations).

<sup>47</sup> R. Addison Dep. 89:15-17, July 13, 2010, attached as Ex. A.

<sup>48</sup> FED. R. EVID. 801(d)(2)(D). Plaintiffs' also object to testimony where Addison detailed statements made by Tom Adams. Adams was Tronox Inc.'s President and made the statements in the course and scope of his

### CONCLUSION

Federal Rule of Evidence 602 provides that a witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Here, Addison admitted in deposition that he has absolutely no personal knowledge of the Lehman, Simpson Thacher, or B.J. Montgomery Documents and very, very little knowledge about Project Focus. Therefore, his testimony based on those topics and documents should be excluded.

Finally, both Woodward and Flake were part of Plaintiffs' management team when they made the statements about which Addison testified. Their statements were well within the scope of the broad authority of Woodward and Flake so, under Federal Rule of Evidence 801(d)(2), they are not hearsay. Plaintiffs' hearsay objections to Addison's testimony about what he was told or learned from Woodward and Flake should be overruled.

For these reasons, Defendants respectfully request that the Court (i) sustain Defendants' objections to the testimony of Addison submitted by Plaintiffs; (ii) overrule the objections Plaintiffs lodged to the testimony from Addison submitted by Defendants; (iii) and award Defendants any and all other relief that the Court deems just and appropriate.

---

duties as Tronox Inc.'s President, wherein he explained certain aspects of the negotiation of the Master Separation Agreement. R. Addison Dep. 683-684, July 15, 2010, attached as Ex. C.

Houston, Texas  
Dated: May 16, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Defendants' Brief on Certain Objections to Designations from the Videotaped Deposition of Roger Addison** was served on the following counsel of record on May 16, 2012, as indicated below:

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*/s/ Jason Billeck*  
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# EXHIBIT A

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Page 1

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 IN RE:

4 ~~TRONOX INCORPORATED, et al.,~~ ) Chapter 11

5 Debtors. ) No. 09-10156

6 ) Jointly Administered

7 TRONOX INCORPORATED, TRONOX )  
8 WORLDWIDE LLC, f/k/a )

9 KERR-McGEE CHEMICAL WORLDWIDE ) Adversary Proceeding  
10 LLC and TRONOX LLC, f/k/a ) No. 09-01198 (ALG)

11 KERR-McGEE CHEMICAL LLC, )

12 Plaintiffs, )

13 vs. )

14 ANADARKO PETROLEUM )

15 CORPORATION and KERR-McGEE )  
16 CORPORATION, )

17 Defendants. )

18 THE UNITED STATES OF AMERICA, )

19 Plaintiff-Intervenor, )

20 vs. )

21 TRONOX INC., TRONOX WORLDWIDE )

22 LLC, TRONOX LLC, KERR-McGEE )

23 CORPORATION and ANADARKO )

24 PETROLEUM CORPORATION, )

25 Defendants. )

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VOLUME I

VIDEOTAPED DEPOSITION OF ROGER ADDISON

JULY 13, 2010

IN OKLAHOMA CITY, OKLAHOMA

REPORTED BY: SHERRI GRUBBS, CSR, RPR, RMR, RDR, CRR

TSG Reporting 877-702-9580

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Page 2		Page 3	
1		1	APPEARANCES
2		2	
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4		4	Attorneys for Anadarko Petroleum Corporation and
5		5	Kerr-McGee Corporation
6		6	700 Louisiana, Suite 1600
7		7	Houston, Texas 77002
8	JULY 13, 2010	8	BY: JASON W. BILLECK, ESQ.
9	9:18 a.m.	9	
10		10	WEIL GOTSHAL & MANGES, LLP
11	Confidential videotaped discovery	11	Attorneys for Anadarko Petroleum Corporation and
12	deposition of ROGER ADDISON, held at the Hilton	12	Kerr-McGee Corporation
13	Skirvin Hotel, Oklahoma City, Oklahoma, pursuant to	13	767 Fifth Avenue
14	subpoena before Sherri Grubbs, CSR, RPR, RMR, RDR,	14	New York, New York 10153-0119
15	CRR.	15	BY: JESSIE B. MISHKIN, ESQ.
16		16	
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20		20	Chicago, Illinois 60654
21		21	BY: ANDREW A. KASSOF, ESQ.
22		22	DAVID H. DeCELLES, ESQ.
23		23	JEFFREY FREEMAN, ESQ. (via telephone)
24		24	KASOWITZ BENSON TORRES & FRIEDMAN, LLP
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			Holders
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			BRANDON JOHNSON, ESQ. (via telephone)
			KAREN DINE, ESQ. (via telephone)
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5	Attorneys for the United States	5	EXAMINATION BY MR. KASSOF .....203
6	ENRD Mailroom, Room 2121	6	ADDISON EXHIBIT NO. 1 marked .....21
7	601 D Street, N.W.	7	ADDISON EXHIBIT NO. 2 marked .....81
8	Washington, D.C. 20004	8	ADDISON EXHIBIT NO. 3 marked .....104
9	BY: KATHERINE M. KANE	9	ADDISON EXHIBIT NO. 4 marked .....157
10		10	ADDISON EXHIBIT NO. 5 marked .....163
11	FELLERS SNIDER	11	ADDISON EXHIBIT NO. 6 marked .....178
12	Attorneys for the witness	12	ADDISON EXHIBIT NO. 7 marked .....186
13	100 North Broadway	13	ADDISON EXHIBIT NO. 8 marked .....198
14	Suite 1700	14	ADDISON EXHIBIT NO. 9 marked .....201
15	Oklahoma City, Oklahoma 73102	15	ADDISON EXHIBIT NO. 10 marked .....205
16	BY: JAY P. WALTERS, ESQ.	16	ADDISON EXHIBIT NO. 11 marked .....209
17	KEVIN R. DONELSON, ESQ.	17	ADDISON EXHIBIT NO. 12 marked .....211
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19	Also present:	19	ADDISON EXHIBIT NO. 14 marked .....237
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1	CONTENTS	1	VIDEOGRAPHER: This is the start of tape 09:18
2		2	labeled number 1 of the videotaped deposition of 09:18
3	ADDISON EXHIBIT NO. 21 marked .....293	3	Roger Addison in the matter of Tronox, Incorporated, 09:18
4	ADDISON EXHIBIT NO. 22 marked .....295	4	et al., versus Anadarko -- Anadarko Petroleum 09:18
5	WITNESS SIGNATURE PAGE .....305	5	Corporation in the United States Bankruptcy Court of 09:18
6	REPORTER CERTIFICATE PAGE .....307	6	the Southern District of New York, Chapter 11; Case 09:19
7		7	No. 09-10156. 09:19
8		8	This deposition is being held at the 09:19
9		9	Skirvin Hotel in Oklahoma City, Oklahoma. Today is 09:19
10		10	July the 13th, 2010. The time is now 9:18 a.m. 09:19
11		11	My name is Robert Rusch from TSG Reporting, 09:19
12		12	Incorporated, and I'm the legal video specialist. 09:19
13		13	The court reporter is Sherri Grubbs, in association 09:19
14		14	with TSG Reporting, as well. 09:19
15		15	At this time, Counsel will identify 09:19
16		16	themselves for the record. Following, the court 09:19
17		17	reporter will swear in the witness. 09:19
18		18	MR. WALTERS: Jay Walters and Kevin 09:19
19		19	Donelson for the witness, Roger Addison. 09:19
20		20	MR. BILLECK: Jason Billeck and Jessie 09:19
21		21	Mishkin from Weil, Gotshal & Manges on behalf of 09:19
22		22	Kerr-McGee and Anadarko. 09:19
23		23	MS. EDWARDS: Jennifer Edwards with 09:19
24		24	Anadarko and Kerr-McGee Corporation. 09:19
25		25	MS. KANE: Katherine Kane, U.S. Department 09:19
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1	of Justice, Environmental Enforcement, on behalf of 09:19	1	We do understand that Mr. Addison served in 09:20
2	the United States. 09:19	2	a legal capacity with both the debtor in possession 09:21
3	MR. SHANK: Ross Shank, Kasowitz, Benson, 09:19	3	and the Defendant; and as such, we are going to rely 09:21
4	Torres & Friedman, Committee of Unsecured Creditors. 09:19	4	on you parties who hold the privilege to assert the 09:21
5	MR. DeCELLES: David DeCelles, Kirkland & 09:20	5	privilege when it becomes -- when or if it becomes 09:21
6	Ellis on behalf of Tronox. 09:20	6	necessary. 09:21
7	MR. KASSOF: Andrew Kassof from Kirkland & 09:20	7	Mr. Addison intends to answer all of the 09:21
8	Ellis on behalf of Tronox. 09:20	8	questions. So we're going to rely on you for that. 09:21
9	On the phone? 09:20	9	MR. BILLECK: Just so we're clear on the 09:21
10	MR. CRICHLow: David Crichlow, Pillsbury, 09:20	10	record, I've seen the Creditors Committee has agreed 09:21
11	Winthrop, Shaw, Pittman on behalf of the Official 09:20	11	to the privileged protocol with respect to the joint 09:21
12	Committee of Equity Security Holders. 09:20	12	privilege documents. And my understanding is the 09:21
13	MR. FREEMAN: Jeff Freeman, Kirkland & 09:20	13	Equity Committee said they had, as well, before we 09:21
14	Ellis on behalf of Tronox. 09:20	14	got on the record. 09:21
15	MR. BILLECK: Is that all? 09:20	15	I just want to make clear on the record the 09:21
16	REPORTER: Would you raise your right hand, 09:20	16	Equity Committee has agreed to the privilege protocol 09:21
17	please. 09:20	17	for the production and discussion of joint privilege 09:21
18	(Witness duly sworn). 09:20	18	documents in the deposition; correct? 09:21
19	MR. WALTERS: If I could just real 09:20	19	MR. CRICHLow: This is correct. I will be 09:21
20	quickly -- Jay Walters on behalf of the witness -- we 09:20	20	forwarding all of the parties in interest a signed 09:21
21	were presented with a privileged protocol in the 09:20	21	letter that will be similar to Mr. Ross' letter that 09:21
22	case, and I'd talked to Counsel before the 09:20	22	went to you a couple of days ago. 09:22
23	deposition. We're new to this matter, and it seems 09:20	23	My secretary has it in hand, but I want to 09:22
24	rather complex, and we don't understand all of the 09:20	24	state for the record, the Equity Committee has 09:22
25	contours. 09:20	25	agreed, with no reservations, to the amended 09:22



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1	A. Yes.	09:26	1	believe June 1st of 1977, and I was there for my	09:27
2	Q. What degree or degrees did you receive?	09:26	2	entire career.	09:27
3	A. It was politic science, a bachelor of -- I	09:26	3	Q. So from 1977 until the IPO of Tronox, you	09:27
4	can't remember if it's arts or science, but it's	09:26	4	served in various capacities as an in-house lawyer at	09:27
5	political science.	09:26	5	Kerr-McGee?	09:28
6	Q. Okay. And what year did you say you	09:26	6	A. That is correct.	09:28
7	graduated from the University of Chicago?	09:26	7	Q. And then after the IPO of Tronox, you	09:28
8	A. University --	09:26	8	served as a general counsel of Tronox; correct?	09:28
9	Q. I'm sorry.	09:26	9	A. That's correct. I'm sorry. When -- when	09:28
10	A. I thought you said University of Chicago.	09:26	10	there was the IPO of Tronox and Tronox was eventually	09:28
11	Q. No, University --	09:27	11	spun off, yes, I -- I went with the entity Tronox and	09:28
12	A. It's University of Colorado.	09:27	12	worked for them as an employee.	09:28
13	Q. Colorado, yes.	09:27	13	Q. And so after the IPO of Tronox in November	09:28
14	A. Yes, 1973.	09:27	14	of 2005, you were no longer a Kerr-McGee employee;	09:28
15	Q. And then did you attend law school?	09:27	15	correct?	09:28
16	A. Yes.	09:27	16	MR. KASSOF: Object to the form.	09:28
17	Q. When did you graduate from law school?	09:27	17	MR. WALTERS: That's all right. When he	09:28
18	A. 1977.	09:27	18	objects, he's just preserving an objection to the	09:28
19	Q. And where did you attend law school?	09:27	19	question.	09:28
20	A. University of Oklahoma in Norman.	09:27	20	WITNESS: Okay.	09:28
21	Q. Upon graduation from law school, please	09:27	21	MR. WALTERS: If there's a claim of	09:28
22	tell me your employment history.	09:27	22	privilege, we'll stop. But otherwise, if he objects,	09:28
23	A. Within a week or so after graduation, I	09:27	23	you just go ahead and answer the question.	09:28
24	started full-time at Kerr-McGee Corporation as an	09:27	24	Q. (BY MR. BILLECK): And I'll just rephrase	09:28
25	in-house lawyer, subject to passing the bar, I	09:27	25	it. I'm not certain of the objection, so we'll try	09:28
Page 16			Page 17		
1	it again.	09:28	1	similar to that. It was a non- -- well, never mind.	09:30
2	Were you an employee of Kerr-McGee after	09:28	2	Q. In that position, were you primarily the	09:30
3	the IPO of Tronox in November of 2005?	09:28	3	legal counsel for the Chemical Division of	09:30
4	A. My understanding is, I was a Kerr-McGee	09:29	4	Kerr-McGee?	09:30
5	employee until November 28th, 2005. On that day, I	09:29	5	A. That's hard to answer, if you want to know	09:30
6	became an employee of Tronox, Incorporated, or one of	09:29	6	the truth. I was designated as a division counsel	09:30
7	its operating subs.	09:29	7	for chemical and, yes, involved in many of the	09:30
8	Q. Were you ever again an employee of	09:29	8	business matters but with some exceptions to -- I'm	09:31
9	Kerr-McGee on or after November 28th, 2005, to the	09:29	9	going to say primarily in litigation and	09:31
10	present?	09:29	10	environmental areas.	09:31
11	A. No.	09:29	11	Q. Okay. When I say "the chemical business,"	09:31
12	Q. What position did you hold -- well, let me	09:29	12	frequently I'll use that as a shorthand for the	09:31
13	ask you this: Do you recall when you became general	09:29	13	entities that ultimately became Tronox.	09:31
14	counsel of Tronox?	09:29	14	Is that consistent with your understanding?	09:31
15	A. I believe it was sometime in the September	09:29	15	A. No.	09:31
16	2005 time frame.	09:29	16	Q. Okay. What do you understand the chemical	09:31
17	Q. Okay.	09:29	17	business to be at Kerr-McGee?	09:31
18	A. It may have been early October, but I	09:29	18	A. At the time I was involved, it was the	09:31
19	believe it was mid to late September.	09:29	19	titanium dioxide business and the -- I think they	09:31
20	Q. Prior to becoming general counsel of	09:29	20	called it the electrolytic chemicals business at	09:31
21	Tronox, what position or title did you hold at -- as	09:30	21	Henderson, Nevada, and I think there was a little bit	09:31
22	a Kerr-McGee employee?	09:30	22	in Hamilton, Mississippi.	09:31
23	A. Immediately prior, I think my title, which	09:30	23	Q. Okay.	09:32
24	was sort of long, was assistant general counsel/vice	09:30	24	A. And I think there may have been some	09:32
25	president for chemical affairs or something very	09:30	25	leftover residual one called battery-type materials	09:32

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1	at DeSoto Springs, Idaho.	09:32	1	Q. So when Mr. Pilcher was promoted to general	09:33
2	Q. How long did you serve in the role as	09:32	2	counsel, you were, I assume, promoted into his	09:33
3	divisional counsel for the Chemical Division?	09:32	3	previously held position within the Kerr-McGee legal	09:33
4	A. I guess about three years. I think it	09:32	4	department?	09:33
5	started in, I want to say, 2001, late in the year.	09:32	5	A. Yes.	09:33
6	I -- I don't remember exactly.	09:32	6	Q. At the time you became a -- the general	09:34
7	Q. Okay. That's fine.	09:32	7	counsel for Tronox in September of 2005, at that	09:34
8	What position did you hold immediately	09:32	8	point in time you were an officer of the Tronox,	09:34
9	before you became division counsel to the Kerr-McGee	09:32	9	Incorporated, entity; correct?	09:34
10	Chemical Division?	09:32	10	A. I didn't hear you. Were or were not?	09:34
11	A. I think I was -- had a title of assistant	09:32	11	Q. Were. I'll reask it.	09:34
12	general counsel for business transactions. Maybe it	09:32	12	A. I -- I was not a Kerr-McGee Corporation	09:34
13	was associate general counsel.	09:32	13	corporate officer. I was a -- I believe a division	09:34
14	Q. And do you recall when you took that	09:33	14	officer. You know, I don't know if I was an officer	09:34
15	position?	09:33	15	of Kerr-McGee Chemical, LLC or not. I'm sure you	09:34
16	A. I believe it was around September of 1999.	09:33	16	guys have a chart that shows. I had the title of	09:34
17	Q. Do you recall what led to you taking on the	09:33	17	division counsel, but -- but...	09:34
18	title of -- did you say head of business	09:33	18	Q. You may have misunderstood my question.	09:34
19	transactions?	09:33	19	A. Okay.	09:34
20	A. Yes. The existing head of business	09:33	20	Q. I think based on the way you're answering	09:34
21	transactions was promoted to general counsel, and so	09:33	21	it. I think I was trying to ask something different,	09:34
22	there was a vacancy.	09:33	22	so let me try again.	09:34
23	Q. And who was that that was promoted to	09:33	23	At the point in time you became general	09:34
24	general counsel?	09:33	24	counsel of Tronox --	09:34
25	A. A man named Greg Pilcher.	09:33	25	A. Yes.	09:34
Page 20			Page 21		
1	Q. -- were you an officer of the Tronox	09:34	1	Q. Okay.	09:36
2	organization?	09:34	2	MR. BILLECK: I'll mark this as Addison I.	09:36
3	A. I'm going to say no.	09:35	3	(Addison Exhibit No. 1 marked).	09:36
4	Q. Okay.	09:35	4	Q. (BY MR. BILLECK): Mr. Addison, do you have	09:37
5	A. But -- but when you use the phrase "Tronox	09:35	5	what's been marked as Exhibit 1?	09:37
6	organization," I don't know what that means.	09:35	6	A. Yes.	09:37
7	Q. We'll use Tronox to refer to Tronox,	09:35	7	Q. Do you recognize Exhibit 1?	09:37
8	Incorporated, and the subsidiaries underneath Tronox	09:35	8	A. I'm not sure I do or not.	09:37
9	that were spun off.	09:35	9	Q. The title of it is, "The Witness Statement	09:37
10	Were you an officer of any of those	09:35	10	of Roger Addison." Correct?	09:37
11	corporations at the time you became general counsel	09:35	11	A. Yes, yes, I mean, I do recognize that.	09:37
12	of Tronox?	09:35	12	MR. KASSOF: I'm sorry. I have the wrong	09:37
13	A. I don't know. I think -- I just really	09:35	13	exhibit.	09:37
14	don't recall.	09:35	14	MR. BILLECK: Oh, did we give you the	09:37
15	Q. Okay. We'll try to find something and show	09:35	15	wrong --	09:37
16	it to you --	09:35	16	MR. KASSOF: No. I've got the wrong one.	09:37
17	A. Okay.	09:35	17	WITNESS: He got the wrong one.	09:37
18	Q. And see if it can --	09:35	18	MR. BILLECK: Oh, he got the wrong one.	09:37
19	A. Okay.	09:35	19	You're correct.	09:37
20	Q. -- refresh your recollection a little bit.	09:35	20	Q. (BY MR. BILLECK): And if you look on the	09:37
21	At the time you became general counsel at	09:35	21	very last page of Exhibit I --	09:38
22	Tronox, how many years' experience did you have as an	09:36	22	A. Uh-huh.	09:38
23	in-house lawyer at Kerr-McGee?	09:36	23	Q. -- I believe it is page 18, do you see your	09:38
24	A. I guess about 20 -- 28 years or so; 27,	09:36	24	signature?	09:38
25	28. From '77 to 2 -- 2005.	09:36	25	A. Yes.	09:38

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1	Q. Is that your signature?	09:38	1	of this statement are true to the best of my	09:39
2	A. It appears to be, yes.	09:38	2	information and belief"; correct?	09:39
3	Q. This document appears to be a witness	09:38	3	A. It does state that, yes.	09:39
4	statement that you submitted in connection with an	09:38	4	Q. I assume then that it's true that you had	09:39
5	arbitration by Kerr-McGee Chemical Worldwide, LLC and	09:38	5	worked on legal matters involving both Kerr-McGee's	09:39
6	Kerr-McGee Chemical, LLC against Kemira Pigments	09:38	6	Oil and Gas and Chemical Divisions, devoting most of	09:39
7	Q. And Kemira OY, correct?	09:38	7	your attention to the Chemical's business since 1988?	09:39
8	A. That's what it states, yes.	09:38	8	A. I think that is correct, yes. It was not	09:40
9	Q. Do you remember an arbitration that was	09:38	9	exclusive Chemical, but --	09:40
10	initiated against these Kemira -- and I'm going to	09:38	10	Q. Sure.	09:40
11	refer to Kemira. I'll refer to these organizations	09:38	11	A. -- primarily.	09:40
12	that are on the first page.	09:38	12	Q. Right, right.	09:40
13	Do you remember the arbitration that was	09:39	13	And as a result, at the time of the IPO of	09:40
14	commenced against Kemira?	09:39	14	Tronox, you had devoted most of your legal work to	09:40
15	A. Yes.	09:39	15	the attention of the Chemicals business for almost 20	09:40
16	Q. If you look on the first page of -- page	09:39	16	years; is that correct, 1988 --	09:40
17	number 2 of your witness statement.	09:39	17	A. Seventeen, 18, yeah.	09:40
18	A. Yes.	09:39	18	Q. Okay. Based on the 25-plus years you had	09:40
19	Q. The third paragraph says, "I worked on	09:39	19	as an in-house lawyer at Kerr-McGee and the 17, 18	09:40
20	legal matters involving both Kerr-McGee's Oil and Gas	09:39	20	years you had devoting your attention to the	09:40
21	and Chemical Divisions, devoting most of my attention	09:39	21	Chemicals business, did you believe at the time that	09:40
22	to Chemical business since 1988"; correct?	09:39	22	you were elected to be the general counsel of Tronox	09:40
23	A. That is what it states there, yes.	09:39	23	that you were prepared and competent and equipped to	09:40
24	Q. If you look on the very last page of your	09:39	24	fulfill the duties associated with that role?	09:41
25	witness statement, the last line says, "The contents	09:39	25	A. Yes, I -- I believe so.	09:41
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1	Q. At the time you became general counsel of	09:41	1	didn't consider them direct reports.	09:42
2	Tronox, and Tronox went through the IPO process, did	09:41	2	Q. Were each of the six attorneys you just	09:42
3	you have any direct reports to you as the general	09:41	3	identified former employees of Kerr-McGee prior to	09:42
4	counsel of Tronox?	09:41	4	the IPO of Tronox in November of 2005?	09:42
5	A. I -- I think, yes. It's -- it's a --	09:41	5	A. Yes, I believe so.	09:42
6	timing is difficult to answer. Clearly, after the	09:41	6	Q. And at that point in time, do you recall	09:42
7	IPO I did.	09:41	7	who your -- I'm sorry. Let me be clear about the	09:42
8	Q. Okay. Let's just talk about after the IPO.	09:41	8	time.	09:42
9	In connection with the IPO, once Tronox was	09:41	9	A. Okay.	09:42
10	IPO'd in November of 2005 --	09:41	10	Q. Prior to the IPO and prior to becoming	09:43
11	A. Yes. We're talking about November 28th and	09:41	11	general counsel of Tronox, when you were divisional	09:43
12	forward?	09:41	12	counsel for the chemicals division, do you recall who	09:43
13	Q. Yes, sir.	09:41	13	your actual employer was?	09:43
14	A. Yes, yes.	09:41	14	A. I'm trying to think what the paycheck said.	09:43
15	Q. Did you have any direct reports at that	09:41	15	Q. Okay.	09:43
16	point as a general counsel of Tronox?	09:41	16	A. I'm pretty sure it said "Kerr-McGee." I	09:43
17	A. Yes.	09:41	17	think it was "Kerr-McGee Worldwide Corporation -- or	09:43
18	Q. And who were your direct reports?	09:41	18	Kerr-McGee Worldwide, LLC" or it could have been --	09:43
19	A. I think it was six attorneys; Michael	09:41	19	you probably know.	09:43
20	Foster, there was a Bill Miller, Dwayne Morris, Tony	09:42	20	I -- I can't remember. It -- it was not	09:43
21	Ellington, Myron Cunningham, Don Shandy. I guess I	09:42	21	Kerr-McGee Chemical. It said "Kerr-McGee" -- I think	09:43
22	had a secretary, slash, assistant, who was a direct	09:42	22	it said "Kerr-McGee Worldwide, LLC." -- I think	09:43
23	report, Earla Brady.	09:42	23	Q. I'll ask you to see if it refreshes your	09:43
24	Q. Okay.	09:42	24	recollection.	09:43
25	A. And there were some paralegals, but I	09:42	25	Do you recall a company that was referred	09:43

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1	Q. (BY MR. BILLECK): When you say you agreed	1	from Tronox?
2	with it completely, your -- I want to make sure I'm	2	A. Yes.
3	clear, you say you completely agreed with the	3	Q. When was that?
4	decision that these would be the individuals who	4	A. My last day of work -- I resigned on
5	would transition from Kerr-McGee Shared Services to	5	November 29th, 2009.
6	Tronox, Inc. as in-house lawyers to support you?	6	Q. 2009?
7	A. I think what I meant to say was, I did not	7	A. Did I say that? I meant to say 2007.
8	object to anyone on the list being there.	8	Sorry.
9	Q. Were you comfortable and believed that this	9	Q. Okay. I just want to make sure.
10	was a qualified group of in-house lawyers that were	10	So it was November -- your last day of work
11	prepared and competent to support you as the in-house	11	as general counsel of Tronox was November 29th, 2007;
12	lawyers for Tronox, Inc.?	12	correct?
13	A. Yes.	13	A. Correct.
14	Q. And, you know, to be more direct, I guess	14	Q. Were you fired or involuntarily terminated
15	one of the questions I'm asking, you didn't feel like	15	from your position as general counsel?
16	you were given the bottom-tiered performers at	16	A. No.
17	Kerr-McGee Shared Services legal department and stuck	17	Q. You, of your own accord, decided that you
18	with people that were not competent, qualified, and	18	would like to retire at that point in time.
19	experienced to support you and perform the roles	19	A. That is correct.
20	necessary as in-house lawyers for Tronox, Inc.?	20	Q. What led you to the conclusion that you
21	A. That is correct. They were all good	21	were ready to retire in November of 2007?
22	attorneys.	22	A. The primary reason was, I was just tired, I
23	Q. During your tenure as the general counsel	23	was burned out or something.
24	after the IPO, did the -- actually, strike that.	24	Q. Okay. You had just reached that point in
25	Do you recall when you ultimately retired	25	your career.
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1	How long had you been practicing law as an	1	At any point during the time that you were
2	in-house lawyer at the point that you retired?	2	general counsel of Tronox, did you believe that
3	A. Almost 31 years.	3	Tronox was not a viable business?
4	Q. And at that point you decided that you had	4	A. No.
5	done it long enough and were just tired of practicing	5	Q. So during your time as general counsel of
6	law as an in-house lawyer and ready to do something	6	Tronox, you always believed that Tronox was a viable
7	else?	7	business?
8	A. Yes.	8	I'm just saying it inversely because I
9	Q. Was there anything else that motivated your	9	think the record is a little --
10	decision to retire from Tronox?	10	A. Well, I'm not sure what you mean by
11	A. I'll say yes, there were attributing	11	"viable."
12	factors.	12	Q. Okay. Let me ask it another way, then.
13	Q. Did you retire from Tronox in 2007 because	13	Did you believe at any time, either before
14	you believed that Tronox was doomed for failure and	14	you became general counsel of Tronox or while you
15	bankruptcy?	15	were general counsel of Tronox, that Tronox was, at
16	A. No.	16	the time of the IPO or subsequent to there, while you
17	Q. In 2007, when you retired, did you believe	17	were general counsel of Tronox, doomed for failure?
18	that Tronox was an insolvent company that was doomed	18	MR. KASSOF: Object to the form, only
19	for failure?	19	because you put in a couple of different timetables.
20	MR. KASSOF: Object to the form of the	20	Q. (BY MR. BILLECK): Let's be more clear.
21	question. Lacks foundation.	21	A. Okay.
22	WITNESS: I did not.	22	Q. From the time you became general counsel of
23	Q. (BY MR. BILLECK): At any point while you	23	Tronox in September of 2005 to the time that you
24	were the general counsel of Tronox, did you believe	24	retired in September of 2007, during that time, did
25	that it was a -- strike that.	25	you believe that Tronox was an insolvent company that

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1	was doomed for failure? 10:08	1	A. What title did you ask, presidency or 10:09
2	MR. KASSOF: Objection. Lacks foundation. 10:08	2	German CEO -- or what did you ask again, I'm sorry? 10:09
3	Object to the form. 10:08	3	Q. Let's try it a different way. 10:10
4	WITNESS: Do I get to answer that? 10:08	4	A. Okay. 10:10
5	MR. WALTERS: Yeah. 10:08	5	Q. What was Mr. Adam, Tom Adams' title at the 10:10
6	WITNESS: No, I did not. I never thought 10:08	6	time of the IPO of Tronox? 10:10
7	it was doomed for failure. 10:08	7	A. I guess he was president. 10:10
8	Q. (BY MR. BILLECK): When you retired from 10:08	8	Q. President of Tronox? 10:10
9	Tronox officially in November of 2007, did Tronox ask 10:08	9	A. Yes. 10:10
10	you to stay on as a consultant for a period of time? 10:08	10	Q. Were you generally familiar with Mr. Adams 10:10
11	A. Yes. 10:08	11	and his reputation at Kerr-McGee prior to the IPO of 10:10
12	Q. And did you agree to do that? 10:08	12	Tronox? 10:10
13	A. Yes. 10:08	13	A. Yes. 10:10
14	Q. And how long did you act as a consultant 10:08	14	Q. And prior to the IPO of Tronox, what was 10:10
15	for Tronox after you were -- your retirement? 10:09	15	Mr. Adams' reputation inside of the Kerr-McGee 10:10
16	A. For a period of -- right at about six 10:09	16	organization? 10:10
17	months. 10:09	17	A. He was a very smart, excellent employee 10:10
18	Q. Who did you report to during that time 10:09	18	that had come over from something called Oryx, and 10:10
19	period, if anyone? 10:09	19	that he just had a high reputation of being an 10:10
20	A. Technically, Mike Foster. 10:09	20	excellent, smart employee. 10:10
21	Q. Okay. Do you know who was the president 10:09	21	Q. Did you believe that Mr. Adams was 10:11
22	and CEO of Tronox at the time of the IPO? 10:09	22	competent and qualified to serve as the president of 10:11
23	A. The title -- president and CEO? 10:09	23	Tronox, Inc. after the IPO? 10:11
24	Q. You're certainly free to correct me on the 10:09	24	A. Yes, I believe so. He had a number of 10:11
25	title. 10:09	25	months as head of the Chemical Division and being 10:11
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1	groomed. I think he learned the business quite well. 10:11	1	A. As a very sharp cracker-jack 10:13
2	Q. And then after the IPO, did you have 10:11	2	accountant/CPA-type financial-officer type. 10:13
3	occasion to work with Mr. Adams at Tronox? 10:11	3	Q. And in connection with the IPO of Tronox, 10:13
4	A. Oh, yes. 10:11	4	Mary Mikkelsen became the CFO of Tronox; correct? 10:13
5	Q. And in your firsthand witnessing of his 10:11	5	A. Yes. 10:13
6	performance as the president of Tronox, how would you 10:11	6	Q. Did you believe that Ms. Mikkelsen was 10:13
7	describe his performance? 10:11	7	competent and qualified to fulfill and perform the 10:13
8	A. Very good. 10:12	8	duties as CFO of Tronox? 10:13
9	Q. Did you think that Mr. Adams competently 10:12	9	A. Yes. 10:13
10	and professionally satisfied and fulfilled the 10:12	10	Q. Did you have occasion to work with 10:13
11	obligations and duties that he had as the president 10:12	11	Ms. Mikkelsen after the IPO of Tronox? 10:13
12	of Tronox? 10:12	12	A. Yes. 10:13
13	A. Yes, I've always thought so. 10:12	13	Q. Describe to me how you viewed 10:13
14	Q. Did you ever think Mr. Adams was not 10:12	14	Ms. Mikkelsen's performance in the fulfillment of her 10:13
15	competent or qualified or failed to fulfill his 10:12	15	duties as the CFO of Tronox. 10:13
16	duties as the president of Tronox after the IPO? 10:12	16	A. Very well. She was one of the most 10:13
17	A. I got a little confused there, but I always 10:12	17	professional and competent people I've ever met. 10:13
18	thought he did a fine job. 10:12	18	Q. Did you view Ms. Mikkelsen as an honest 10:14
19	Q. Okay. What about Mary Mikkelsen? Did you 10:12	19	person? 10:14
20	have any familiarity with Mary Mikkelsen prior to the 10:12	20	A. Yes. 10:14
21	IPO of Tronox? 10:12	21	Q. Did you ever witness her in any way to try 10:14
22	A. Yes. 10:12	22	to misrepresent or mislead Tronox investors, Tronox's 10:14
23	Q. And what was Mary Mikkelsen's reputation 10:12	23	banks, Tronox's auditors? 10:14
24	inside of Kerr-McGee, from your perspective, prior to 10:12	24	A. No. 10:14
25	the IPO of Tronox? 10:13	25	Q. Did you ever see Mr. Adams -- did you ever 10:14

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1	witness or think Mr. Adams had misled,	10:14	1	Q. Okay. And that is counsel you have with	10:16
2	misrepresented, or was being less than honest with	10:14	2	you here today?	10:16
3	Tronox's investors, banks, Ernst & Young, in	10:14	3	A. That is correct.	10:16
4	connection with performing his duties as the	10:14	4	Q. Did you review any documents?	10:16
5	president of Tronox?	10:14	5	A. Documents? Yeah, I did. I mean, I had a	10:16
6	A. No.	10:14	6	copy of the petition and the adversary complaint, and	10:16
7	Q. You know Ms. Mikkelsen and Mr. Adams have	10:15	7	I reread that.	10:16
8	been sued in a class action security lawsuit, do you	10:15	8	Q. Okay. Did you talk with anyone other than	10:16
9	not?	10:15	9	your counsel to get ready for the deposition today,	10:16
10	A. That is my understanding, yes.	10:15	10	as far as substantively prepare for your testimony?	10:16
11	Q. You are not a defendant and have not been	10:15	11	A. I -- I -- I have spoken with you in the	10:16
12	sued in any lawsuit regarding your role either as an	10:15	12	past informally, and I've spoken with this other	10:16
13	employee of Kerr-McGee Shared Services or as a	10:15	13	counsel, Kirkland Ellis, I think a Jeffrey Zeiger, I	10:16
14	general counsel for Tronox; correct?	10:15	14	spoke with him informally some months ago, but that	10:16
15	A. Not as far as I know.	10:15	15	wasn't, I didn't think, really in association with	10:16
16	Q. As the general counsel of Tronox, who did	10:15	16	this. It was just deep background or something.	10:16
17	you report to?	10:15	17	Q. Okay, right. So the meetings -- the	10:16
18	A. Tom Adams.	10:15	18	informal meetings you've had with the Kirkland &	10:16
19	Q. Just a little more background on sort of	10:15	19	Ellis law firm and with Weil Gotshal, your deposition	10:17
20	the deposition.	10:15	20	hadn't even been noticed at that point; correct?	10:17
21	Did you do anything to prepare for your	10:15	21	A. That is correct.	10:17
22	deposition today or --	10:15	22	Q. And you didn't view that as a preparation	10:17
23	A. Yes.	10:15	23	for your deposition, either the meeting with Kirkland	10:17
24	Q. What did you do?	10:15	24	or with Weil Gotshal?	10:17
25	A. I hired counsel.	10:16	25	A. That is correct.	10:17
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1	Q. Other than the meeting -- informal meeting	10:17	1	your confidentiality and privilege obligations to	10:18
2	you had with Mr. Zeiger, was there anyone else that	10:17	2	make sure you didn't improperly disclose something	10:18
3	attended on behalf of Kirkland & Ellis?	10:17	3	you weren't supposed to disclose.	10:18
4	A. Yes.	10:17	4	Is that what the substance of that	10:18
5	Q. Who was that? I can probably help you.	10:17	5	conversation was?	10:18
6	A. David Zott, I believe.	10:17	6	A. That is correct. Being counsel, I was very	10:18
7	Q. Okay.	10:17	7	concerned -- with protecting my clients' confidences,	10:18
8	A. Is that -- well -- is that correct? I	10:17	8	privileged material.	10:18
9	don't think that was his name.	10:17	9	Q. And you've taken the steps you believe	10:18
10	Q. That is a name that could be correct, so	10:17	10	necessary to fulfill that obligation; correct?	10:18
11	I'll assume that --	10:17	11	A. I certainly believe so. You all heard the	10:18
12	A. Okay.	10:17	12	opening statement by my counsel where we've agreed	10:18
13	Q. -- it is.	10:17	13	that basically there's been a general waiver of this.	10:18
14	Did you talk with anyone from Kirkland &	10:17	14	Q. You referenced a complaint filed in this	10:19
15	Ellis substantively about the case since that	10:17	15	lawsuit.	10:19
16	informal meeting?	10:17	16	Did you receive a copy of it at some point	10:19
17	A. I was sitting in on -- on a -- on a phone	10:18	17	after it was filed?	10:19
18	call that my counsel had with Mr. Zeiger yesterday	10:18	18	A. Yes.	10:19
19	regarding some procedural issues, but I don't think	10:18	19	Q. Were you consulted in any way regarding the	10:19
20	it was substantive.	10:18	20	complaint prior to it being filed?	10:19
21	Q. Okay. And what did that phone call deal	10:18	21	A. No.	10:19
22	with?	10:18	22	Q. Did you receive the complaint and review it	10:19
23	A. Privilege issues.	10:18	23	before you spoke with the lawyers for Kirkland &	10:19
24	Q. And I think, as you explained to me when we	10:18	24	Ellis or the lawyers for -- I'm sorry. Not the	10:19
25	met informally before, you are taking very seriously	10:18	25	lawyers for Kirkland & Ellis. Let me rephrase that.	10:19

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1	Did you receive and review the complaint 10:19	1	allegations in the complaint were accurate and that 10:21
2	before you had your informal meeting with the lawyers 10:19	2	they could prove it. 10:21
3	from Kirkland & Ellis and with lawyers for Anadarko 10:19	3	Q. Did they attempt to persuade you of their 10:21
4	and Kerr-McGee? 10:19	4	opinions and beliefs? 10:21
5	A. Yes. 10:19	5	A. I'm not sure I know how to answer that. 10:21
6	Q. What was your initial reaction when you 10:19	6	The final comment said, "You're either with us or 10:21
7	received the complaint and read it to the allegations 10:19	7	against us." 10:21
8	and claims contained in the complaint? 10:19	8	Q. Either Mr. Zott or Mr. Zeiger said to you, 10:21
9	A. I'm going to say, I was surprised. 10:19	9	"You're either with us or you're against us"? 10:21
10	Q. What do you mean "surprised"? 10:20	10	A. Yes. 10:21
11	A. You asked what my reaction was. That's 10:20	11	Q. What was your response? 10:21
12	what it was. It just didn't seem like -- this 10:20	12	A. I don't think I responded. 10:21
13	doesn't sound like what happened to me. 10:20	13	Q. Do you view yourself as either with or 10:22
14	Q. So by "surprised," you meant, based on your 10:20	14	against either Tronox or Kerr-McGee or Anadarko in 10:22
15	years as an in-house lawyer at both Kerr-McGee and as 10:20	15	this case? 10:22
16	the general counsel of Tronox, the allegations and 10:20	16	A. No. 10:22
17	claims in the complaint were inconsistent with what 10:20	17	Q. How do you view yourself? 10:22
18	you personally witnessed occurring? 10:20	18	A. Neutral, just try and tell the truth and 10:22
19	A. That's a big mouthful, but I would say yes. 10:20	19	state the facts as I know them. 10:22
20	Q. Did you generally express that opinion to 10:20	20	Q. How did you view or how did you interpret 10:22
21	Mr. Zeiger and Mr. Zott when you informally met with 10:21	21	the statement "You're either with us or you're 10:22
22	them? 10:21	22	against us"? 10:22
23	A. I believe I did. 10:21	23	A. I don't know how to answer that. I just -- 10:22
24	Q. What was their reaction? 10:21	24	the comment surprised me, I'll just say that. 10:22
25	A. They indicated they -- they thought the 10:21	25	Q. Back to the question before. What did you 10:22
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1	mean by "surprised you"? 10:22	1	effectively saying they would commit perjury. 10:24
2	A. I don't know how to answer that, I guess. 10:23	2	Did you ever make that statement? 10:24
3	You know, I really don't know how to answer that 10:23	3	A. I can't imagine my -- me ever saying that, 10:24
4	other than to say -- no, I don't know what to say. 10:23	4	no. 10:24
5	Q. You're familiar with an individual named 10:23	5	Q. Do you believe that Mr. Corbett would 10:24
6	Robert Gibney, is that correct? 10:23	6	commit perjury in a lawsuit? 10:24
7	A. Yes. 10:23	7	When I say Mr. Corbett, Luke Corbett. 10:24
8	Q. You're aware that after you retired from 10:23	8	Do you have any basis to believe that 10:24
9	Tronox, Mr. Adams was fired by Tronox; correct? 10:23	9	Mr. Luke Corbett would commit perjury in this 10:24
10	A. Yes, I heard that. 10:23	10	lawsuit? 10:24
11	Q. And after your retirement from Tronox, do 10:23	11	A. No, I have no basis for that. 10:24
12	you understand that Tronox also fired Mary Mikkelsen? 10:23	12	Q. Do you have any basis or belief that 10:25
13	A. Yes. 10:23	13	Mr. Wohleber, Bob Wohleber, would commit perjury or 10:25
14	Q. And do you understand that Mr. Gibney still 10:23	14	lie on the stand in this lawsuit? 10:25
15	works for Tronox? 10:23	15	A. I don't know either of those gentlemen very 10:25
16	A. Yes. 10:24	16	well, but I have no basis for thinking they would do 10:25
17	Q. I want to ask you about something. Let me 10:24	17	any of that, commit perjury. 10:25
18	ask this. Have you seen the depositions from 10:24	18	Q. In the time that you worked at Kerr-McGee, 10:25
19	Mr. Adams, Ms. Mikkelsen, or Mr. Gibney? 10:24	19	I know you may not have interacted with them on a 10:25
20	A. No. 10:24	20	daily basis, but did you ever see Mr. Wohleber or 10:25
21	Q. In the deposition of Mr. Gibney, he said 10:24	21	Mr. Corbett conduct themselves in an unethical or 10:25
22	that at some point after the IPO you made the 10:24	22	dishonest fashion? 10:25
23	statement that "Some day there'd be a lawsuit against 10:24	23	A. Never. 10:25
24	Kerr-McGee by Tronox and that Luke Corbett and Bob 10:24	24	Q. All right. Let's talk about -- do you 10:25
25	Wohleber would lie on the stand in that lawsuit," 10:24	25	remember the acquisition by Kerr-McGee Chemical 10:25

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1	Exhibit 2 prior to today?	11:21	1	witness statement, at the top there's a statement	11:23
2	A. I don't recall. It wouldn't surprise me if	11:21	2	that says -- actually, look on page 5 to see -- the	11:23
3	I had. I just don't recall.	11:21	3	section is entitled "Limitations imposed by Kemira on	11:23
4	Q. At the time of the Kemira acquisition, what	11:21	4	the due diligence process"; correct?	11:23
5	was Mr. Woodward's position or title inside of	11:21	5	A. That's what the style says, yes.	11:23
6	Kerr-McGee?	11:22	6	Q. And in talking about those limitations,	11:23
7	A. It's complicated title. They always had	11:22	7	Mr. Woodward says, "While such restrictions are not	11:23
8	funny titles. I think it was senior vice president	11:22	8	unusual in the business world, they do inhibit a	11:23
9	of Kerr-McGee for chemical operations. He was a	11:22	9	purchaser's ability to develop its own insights into	11:23
10	Kerr-McGee corporation employee in charge of chemical	11:22	10	the business that is being purchased.	11:23
11	group.	11:22	11	"These kinds of restrictions forces the	11:23
12	He was not a Kerr-McGee Chemical employee.	11:22	12	buyer to rely on the accuracy of the seller's	11:23
13	He was a Kerr-McGee Corporation employee.	11:22	13	information and, therefore, require that strong	11:23
14	Q. But his primary responsibilities were for	11:22	14	contractual warranties, representations,	11:23
15	the operations of Kerr-McGee -- of the Chemical	11:22	15	indemnifications be included in the purchase	11:23
16	Division of Kerr-McGee; correct?	11:22	16	agreement"; is that correct?	11:23
17	A. Yes.	11:22	17	A. Yeah, that appears to be a quote from the	11:23
18	Q. Did you believe Mr. Woodward to be	11:22	18	witness statement, yes.	11:23
19	competent and qualified in that role?	11:22	19	Q. And that is consistent with your	11:23
20	A. Yes.	11:22	20	understanding -- well, strike that.	11:23
21	Q. We talked earlier about some of the timing	11:22	21	Is that consistent with your understanding	11:23
22	limitations or due diligence limitations placed on	11:22	22	in the business world that these types of limitations	11:23
23	the Kemira transaction. Do you recall that?	11:22	23	are not unusual, but that they require the sell- --	11:23
24	A. Yes.	11:22	24	the purchaser to obtain strong contractual	11:24
25	Q. If you look on page 6 of Mr. Woodward's	11:23	25	warranties, representations, and indemnifications in	11:24
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1	the purchase agreement?	11:24	1	A. Yes, but not personal knowledge. I mean, I	11:25
2	A. Yeah. I mean, it depends on the deal. I	11:24	2	was told that. I didn't go out and personally	11:25
3	will say yes. But if you cannot -- representations	11:24	3	inspect girders and pipes and things --	11:25
4	and warranties can substitute for due diligence.	11:24	4	Q. Right.	11:26
5	Ideally, you get the maximum of both, but	11:24	5	A. But, yeah -- but, yeah, our guys told us	11:26
6	you can't always negotiate that.	11:24	6	that the thing had some problems that were sort of	11:26
7	Q. Was it your opinion -- or is it your	11:24	7	hidden. And I believed them. I had no reason not	11:26
8	opinion that Kerr -- that Kemira intentionally --	11:24	8	to.	11:26
9	not intentionally. Strike that.	11:24	9	Q. Who were the guys that told you some things	11:26
10	Was it your opinion that Kemira did not	11:24	10	were hidden, if you recall?	11:26
11	provide honest, truthful, and full representations	11:25	11	A. Those are my words and they sound funny	11:26
12	and warranties regarding the plant equipment and its	11:25	12	when they're repeated to me, but I guess engineers.	11:26
13	compliance with laws in the purchase agreement?	11:25	13	There was an additional due diligence period between	11:26
14	A. You said a mouthful, but I --	11:25	14	contract signing and closing, and I think they sent	11:26
15	Q. You can restate it.	11:25	15	some people down there at that time to -- "down	11:26
16	A. Kerr -- Kerr-McGee believed that Kemira	11:25	16	there."	11:26
17	breached its representations and warranties in that	11:25	17	There were two plants involved. This	11:26
18	regard, that they were incorrect as to their	11:25	18	primarily relates to the Savannah, Georgia, plant. I	11:26
19	compliance with the law. They were not in compliance	11:25	19	believe, some process engineers and people that	11:26
20	with law, as represented.	11:25	20	worked at our Hamilton plant that knew about the	11:26
21	Q. And that the plant equipment was not as	11:25	21	equipment and stuff went down there and looked at it.	11:26
22	represented by Kemira, as well; correct?	11:25	22	Q. And after the transaction closed, they	11:26
23	A. Correct.	11:25	23	discovered that the plant and equipment was not as	11:26
24	Q. And you said Kerr-McGee believed those	11:25	24	represented?	11:26
25	things. You also believed those things, did you not?	11:25	25	MR. KASSOF: Objection. Misstates the	11:27

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1	testimony. Object to the form.	11:27	1	that came up on the night of closing related to the	11:28
2	WITNESS: Certainly after the closing, I	11:27	2	date by which Kemira would fully remedy the problems	11:28
3	know they were discovering problems that -- I don't	11:27	3	referenced in the OSHA complaint?	11:28
4	recall were latent defects, nothing obvious. But we	11:27	4	A. It -- it could have been, I don't	11:28
5	started investigating, and they were finding	11:27	5	remember. I almost think it was something else, but	11:28
6	problems. I'm not an engineer. I don't really know	11:27	6	I just don't recall.	11:28
7	how it happened, but there were structural problems.	11:27	7	Q. Okay. If that's what it says in the	11:28
8	Q. (BY MR. BILLECK): Let me just ask it this	11:27	8	witness statement, you would have no reason to	11:28
9	way: Were there material defects and problems with	11:27	9	believe that's inaccurate; correct?	11:28
10	the Kemira plant that you and Kerr-McGee knew about	11:27	10	A. If this is an accurate representation of	11:28
11	in advance of closing the purchase agreement that you	11:27	11	the witness statement I signed, I remember carefully	11:28
12	merely ignored or did not care about?	11:27	12	reviewing it and thinking it was perfectly accurate	11:29
13	MR. KASSOF: Object to the form of the	11:27	13	when I signed it, so, yes.	11:29
14	question. Compound.	11:27	14	Q. And after looking at it here today, I think	11:29
15	WITNESS: I don't recall being aware of any	11:27	15	you said -- you can tell me -- do you have any reason	11:29
16	big problems prior to the closing.	11:27	16	to believe that this is not an accurate copy of the	11:29
17	Let me qualify it. It seems like there's	11:28	17	witness statement you signed?	11:29
18	one little blurb that happened the night before	11:28	18	A. I mean, I have no reason to believe that	11:29
19	closing and I think it was mentioned in this witness	11:28	19	it's not accurate, but it's not like I've initialed	11:29
20	statement. I can't recall now exactly what it was,	11:28	20	every single page or something, but, you know...	11:29
21	but I think it was a qualifier on asbestos or	11:28	21	MR. WALTERS: And I'm sorry. Just for	11:29
22	something.	11:28	22	clarification, we're talking about Exhibit I now, his	11:29
23	Q. (BY MR. BILLECK): You're welcome to look at	11:28	23	witness statement?	11:29
24	the witness statement to refresh your recollection as	11:28	24	MR. BILLECK: His witness statement, yes.	11:29
25	you refer to it, but could it have been the issue	11:28	25	WITNESS: Okay.	11:29
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1	MR. WALTERS: The witness was looking --	11:29	1	not?	11:30
2	WITNESS: I was at the --	11:29	2	A. Pete Woodward, yes, yes.	11:30
3	MR. WALTERS: -- at Mr. Woodward's.	11:29	3	Q. Did he have a substantial involvement or	11:30
4	WITNESS: He's right.	11:29	4	limited involvement?	11:30
5	MR. BILLECK: I apologize for the	11:29	5	A. I would say very substantial.	11:30
6	confusion.	11:29	6	Q. Was Mr. Woodward, as the individual in	11:30
7	WITNESS: Okay. But you're right. No --	11:29	7	charge of the Chemical Division at Kerr-McGee, a	11:30
8	if this, in fact, is my -- a copy, a true and	11:29	8	proponent of completing the Kemira acquisition?	11:31
9	accurate copy of my original witness statement, I	11:29	9	A. I believe, yes.	11:31
10	reviewed it very carefully before I signed it. And I	11:29	10	Q. Was there anyone else that you can recall	11:31
11	then and now still feel comfortable it was accurate.	11:29	11	that was a proponent or in favor of completing the	11:31
12	Q. (BY MR. BILLECK): And sitting here today,	11:29	12	Kemira acquisition?	11:31
13	you have no basis to believe that is not a true and	11:29	13	A. Yes.	11:31
14	accurate copy of the witness statement you submitted;	11:29	14	Q. Who else?	11:31
15	correct?	11:30	15	A. Certainly a gentleman named Joe Flake, who	11:31
16	A. That is correct.	11:30	16	was Chemical's head of business development or	11:31
17	Q. Let's mark this -- actually, we don't need	11:30	17	something at that time, and -- I mean, I heard no one	11:31
18	to mark it. It's marked as Adams Exhibit 2. This is	11:30	18	who was against it. I heard no objection voiced	11:31
19	a copy -- a current copy of the complaint filed in	11:30	19	against it from anyone.	11:31
20	the lawsuit.	11:30	20	Q. What about -- do you know an individual	11:31
21	A. Okay.	11:30	21	named Bobby Brown?	11:31
22	Q. Will you turn to page 12?	11:30	22	A. Oh, yes.	11:31
23	A. Okay.	11:30	23	Q. Do you recall if Mr. Brown was in favor of	11:31
24	Q. Let me ask this: Mr. Woodward was involved	11:30	24	completing the Kemira acquisition at the time?	11:31
25	in connection with the Kemira acquisition, was he	11:30	25	A. I'm not even sure he knew about it. He	11:31

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1	question. I'm not sure how it's going to read.	11:37	1	assets?	11:39
2	When you talk about "they may have paid	11:37	2	A. My understanding -- this is from	11:39
3	more for the asset or left money on the table," that	11:37	3	discussions with Pete Woodward and Joe Flake -- were	11:39
4	is a conclusion that was reached after the deal	11:37	4	that -- I have no personal knowledge of this, but	11:39
5	closed, or was that something that was known before	11:37	5	that the Kerr-McGee board in the late '90s time frame	11:39
6	the Kemira deal closed?	11:37	6	thought it would be appropriate to have the overall	11:39
7	MR. KASSOFF: Object -- objection.	11:37	7	business be one-third chemical and two-thirds oil and	11:39
8	Foundation. You're asking him personally or the	11:38	8	gas because they tended to naturally hedge	11:39
9	company?	11:38	9	themselves.	11:39
10	MR. BILLECK: I'm asking him, to the best	11:38	10	When oil and gas prices were up, chemical	11:39
11	of his knowledge.	11:38	11	was sometimes down. When oil and gas prices were	11:39
12	WITNESS: No, I -- I don't know. I don't	11:38	12	down, chemical was up. And that's why they	11:39
13	have any personal knowledge of that.	11:38	13	authorized buying the Bayer or Byer Chemical thing in	11:40
14	Q. (BY MR. BILLECK): Did you ever hear anyone	11:38	14	'98, and it sold them up to the one-third weight, and	11:40
15	in advance of the Kemira transaction closing say or	11:38	15	so they wanted to get some more assets.	11:40
16	do anything to give you the impression that	11:38	16	And -- and Kemira's TiO2 assets fit the	11:40
17	Kerr-McGee was intentionally overpaying for the	11:38	17	bill. It was too hard to build the brand new ones	11:40
18	assets of Kemira?	11:38	18	because of environmental permitting or something,	11:40
19	A. Overpaying, no.	11:38	19	they called them, plants. So it was easier to buy	11:40
20	Q. Do you believe the purpose of the Kemira	11:38	20	existing assets.	11:40
21	transaction was to allow Kerr-McGee to foist legacy	11:38	21	Q. Had the one-third chemical/two-thirds oil	11:40
22	liabilities onto Kerr-McGee Chemical?	11:38	22	and gas hedging strategy gotten out of whack, meaning	11:40
23	A. No.	11:39	23	they weren't two-thirds/one-third at some point prior	11:40
24	Q. What did you understand to be the driver	11:39	24	to the Kemira acquisition?	11:40
25	for Kerr-McGee to want to acquire additional chemical	11:39	25	A. No. Well, maybe. I don't know. I	11:40
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1	don't -- I know afterwards it seemed to get out of	11:40	1	increase their market share and give them economies	11:42
2	balance, but I'm not sure about before.	11:40	2	of scale. I think they thought it would be very,	11:42
3	Q. Well, prior to the Kemira acquisition, did	11:40	3	very good for Kerr-McGee Chemical.	11:42
4	Kerr-McGee acquire a company called Oryx?	11:40	4	I think they would become second or third	11:42
5	A. Yes.	11:41	5	largest and able to better compete with DUPONT, who	11:42
6	Q. Was Oryx an oil and gas company?	11:41	6	was the largest.	11:42
7	A. Yes.	11:41	7	Q. Did you view their basis for wanting to	11:42
8	Q. Do you recall if the acquisition of Oryx	11:41	8	complete the Kemira acquisition as good faith efforts	11:42
9	may have disturbed the two-thirds/one-thirds balance	11:41	9	to better and to improve the Chemical company?	11:43
10	desired for the hedging of the markets?	11:41	10	A. Yes, I did.	11:43
11	A. I think it may well have. I don't remember	11:41	11	Q. Do you recall whether or not there was	11:43
12	ever giving it much consideration. I think Oryx was	11:41	12	anything particular or unique with respect to the	11:43
13	a big company, it was a big merger, but I don't	11:41	13	technology that the Kemira facilities employed that	11:43
14	remember the relative values.	11:41	14	made it particularly valuable to Kerr-McGee?	11:43
15	Q. Did Pete Woodward explain to you why he was	11:41	15	A. Yes.	11:43
16	a proponent of the Kemira acquisition?	11:41	16	Q. What was that?	11:43
17	A. Yeah. He and Joe Flake were both	11:41	17	A. I was told it was based on Kerr-McGee's	11:43
18	proponents. I'm not sure I can keep them separate.	11:41	18	base technology for producing TiO2 pigment.	11:43
19	It's almost like they were jointly for it, very much	11:42	19	Q. When you say "it was based," what is the	11:43
20	so.	11:42	20	"it" you're referring to, the two plants that were	11:43
21	Q. Why did you understand Mr. Woodward and	11:42	21	being acquired?	11:43
22	Mr. Flake to be big proponents jointly in favor of	11:42	22	A. I'm sorry. Two plants are being acquired,	11:43
23	completing the Kemira acquisition?	11:42	23	both made titanium dioxide. Clearly, the one in	11:43
24	A. They were very high on the potential of its	11:42	24	Botlek, the Netherlands, was based on Kerr-McGee's	11:43
25	titanium dioxide, TiO2 business, and this would	11:42	25	proprietary license technology.	11:43

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1	next page, page 3 of the exhibit, do you see it says	03:31	1	A. No, I believe it was written in April or	03:32
2	"movement or allocation of assets and liabilities"?	03:31	2	May of 2005.	03:32
3	Do you see that heading?	03:31	3	Q. Right. Then the assignment, assumption and	03:32
4	A. Okay. Roman numeral I at the very top,	03:31	4	indemnity agreement was backdated to be effective	03:32
5	yes.	03:31	5	December 31, 2002, consistent with the Project Focus	03:32
6	Q. Yes.	03:31	6	closing date; right?	03:32
7	A. Yes.	03:31	7	MR. BILLECK: Objection, form.	03:32
8	Q. And that's consistent with some of the work	03:31	8	WITNESS: Yes, that, I think, is correct.	03:32
9	that was done on Project Focus, right? There were a	03:31	9	Q. (BY MR. KASSOF): And movement and	03:32
10	movement -- there was a movement and an allocation of	03:31	10	allocation of assets and liabilities, the description	03:32
11	assets and liabilities between Kerr-McGee Oil & Gas	03:31	11	in Addison Exhibit 11, that's consistent with the	03:33
12	and what was at the time Kerr-McGee Chemical	03:31	12	work that was done and agreed to in connection with	03:33
13	Worldwide; correct?	03:31	13	the assignment agreement and the assignment,	03:33
14	A. I think that is correct to some extent,	03:32	14	assumption and indemnity agreement; correct?	03:33
15	yes.	03:32	15	A. I'm not certain. I believe probably yes,	03:33
16	Q. And, in fact, we even saw the assignment,	03:32	16	but I don't recall -- what you're calling Addison	03:33
17	assumption and indemnity agreement and the assignment	03:32	17	Agreement 11, I do not yet recall what was done about	03:33
18	agreement, both of which were backdated to be as --	03:32	18	movement and allocation of assets and liabilities.	03:33
19	effective as of December 31, 2002; right?	03:32	19	Q. Let's look at it. Under the first one, A,	03:33
20	MR. BILLECK: Objection, form.	03:32	20	it talks about preparing a comprehensive chart,	03:33
21	WITNESS: There was such a document and it	03:32	21	right, showing all existing corporations, companies	03:33
22	was dated as of December 31st, 2002.	03:32	22	and partnerships --	03:33
23	Q. (BY MR. KASSOF): We'll come back to that	03:32	23	A. Yes.	03:33
24	document, but it wasn't -- it wasn't written as of	03:32	24	Q. And indicating the ownership interest in	03:33
25	December 2002; correct?	03:32	25	such entities.	03:33
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1	Do you see that?	03:33	1	different liabilities and assets that would need to	03:34
2	A. Yes.	03:33	2	be allocated consistent with the heading "moved or	03:34
3	Q. Do you know who was assigned that work at	03:33	3	allocated" under Project Focus; correct?	03:34
4	Kerr-McGee under Project Focus?	03:33	4	MR. BILLECK: Objection, form.	03:34
5	A. No, but probably someone in the tax	03:33	5	WITNESS: It does appear to list a number	03:34
6	department.	03:33	6	of things that might be allocated among different	03:34
7	Q. And then the second one, I-B, talks about	03:33	7	entities.	03:35
8	identifying all business assets, liabilities, and	03:34	8	Q. (BY MR. KASSOF): Right. And it's all	03:35
9	legal entities which will comprise each of the new	03:34	9	consistent with the work that was undertaken at	03:35
10	intermediate holding companies of Kerr-McGee at the	03:34	10	Kerr-McGee in 2002 under Project Focus; right?	03:35
11	time of the reorganization. Do you see that?	03:34	11	A. I have no reason to disagree.	03:35
12	A. Uh-huh.	03:34	12	Q. And under I-B 2, "verify that no assets or	03:35
13	Q. Do you know who was assigned that task at	03:34	13	liabilities currently held by a direct or indirect	03:35
14	Kerr-McGee?	03:34	14	subsidiary of a Kerr-McGee operating corporation	03:35
15	A. I do not recall, no.	03:34	15	needs to be moved to another subsidiary." Do you see	03:35
16	Q. And then B-I talks about determining	03:34	16	that?	03:35
17	whether items reflected on the Kerr-McGee operating	03:34	17	A. Uh-huh.	03:35
18	corporation balance sheet are to be held at that	03:34	18	Q. That's correct? You see that; right, sir?	03:35
19	level, that company's level, or allocated among its	03:34	19	A. I see that, yes.	03:35
20	direct and indirect subsidiaries.	03:34	20	Q. Okay. That's also consistent with the work	03:35
21	A. Uh-huh.	03:34	21	that Kerr-McGee did in -- under Project Focus; right?	03:35
22	Q. Identify and allocate corporate level under	03:34	22	A. You know, I really don't know. It makes	03:36
23	shared assets and liabilities among the entities;	03:34	23	sense, though.	03:36
24	right?	03:34	24	Q. It especially makes sense since there was	03:36
25	Then underneath it lists a whole host of	03:34	25	an assignment, assumption and indemnity agreement	03:36

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1	A. Okay.	03:45	1	with the work that was shown to you in Project Focus	03:46
2	Q. If you look at heading 1, it says "Movement	03:45	2	of Exhibit 11, and then you look back at 1-B, which	03:46
3	or allocation of assets and liabilities"; right?	03:45	3	is the work described by Simpson Thacher under the	03:46
4	A. Yes, it does.	03:45	4	Project Titan spinoff, it's almost the same except	03:46
5	Q. And that's the same heading in the Project	03:45	5	you'll notice that the reference to "spin company"	03:46
6	Focus, Exhibit 11 document, 11 months later; right?	03:45	6	and" spinoff" was deleted from the version that you	03:46
7	A. It looks like it, yes.	03:45	7	got in Project Focus in 2002.	03:46
8	Q. And if you look at 1-A in both documents,	03:45	8	Do you see that, sir?	03:47
9	the Project Titan checklist and the Project Focus	03:45	9	A. Tell me exactly where. I see a Spinco in	03:47
10	checklist, Simpson Thacher basically put the exact	03:45	10	capital B paragraph.	03:47
11	same description for the work to be done; correct?	03:45	11	Q. You're looking under 1-B on Exhibit 13,	03:47
12	A. Looks like it to me, yes.	03:45	12	which is the Project Titan spinoff document; correct?	03:47
13	Q. And you've got no reason to believe you	03:46	13	A. Yes.	03:47
14	ever got this Project Titan spinoff checklist;	03:46	14	Q. If you look at 1-B on the Project Focus	03:47
15	correct?	03:46	15	reorganization document, which is the one that you	03:47
16	A. I have no reason to believe that, and I	03:46	16	got from 2002, you'll notice that the references to	03:47
17	don't remember ever receiving it.	03:46	17	Spinco and spinoff were deleted from that entry;	03:47
18	Q. And when you got that Project Focus	03:46	18	correct?	03:47
19	checklist that was forwarded from Simpson Thacher, no	03:46	19	MR. BILLECK: Objection, form.	03:47
20	one ever told you that there was this other Project	03:46	20	WITNESS: Correct.	03:47
21	Titan checklist floating around from 11 months	03:46	21	Q. (BY MR. KASSOF): And then if you look under	03:47
22	earlier; true?	03:46	22	1-B-1, "Movement or allocation of assets," where it	03:47
23	A. I sure don't recall, so I think that's	03:46	23	talks about determining the allocations among the	03:47
24	true.	03:46	24	various businesses, if you start chronologically with	03:47
25	Q. And if you look at 1-B, why don't we start	03:46	25	the Project Titan spinoff document, you'll see lots	03:47
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1	of lists of items that we talked about earlier that	03:47	1	Project Focus in 2002 actually was first derived to	03:49
2	was identical to the work to be done under Project	03:47	2	be a task under a proposed spinoff of Project Titan,	03:49
3	Focus reorganization; correct?	03:47	3	the Chemical operations; correct?	03:49
4	MR. BILLECK: Objection, form.	03:48	4	MR. BILLECK: Objection, form.	03:49
5	WITNESS: They look very similar. I've not	03:48	5	WITNESS: I certainly never heard of it.	03:49
6	read each -- every A through whatever it is, Q. R, S,	03:48	6	No one explained that to me.	03:49
7	compared them, but they look very similar.	03:48	7	Q. (BY MR. KASSOF): Then if you look at 1-D,	03:49
8	Q. (BY MR. KASSOF): And if you go to -- under	03:48	8	"determine tax liability allocations," that's how	03:49
9	1-B-2 on the Project Titan spinoff document that you	03:48	9	it's described under the Project Focus checklist in	03:49
10	didn't get in 2001, the movement of allocation of	03:48	10	2002.	03:49
11	assets or liabilities, you see that the entry says	03:48	11	A. Uh-huh.	03:49
12	"Verify that no assets or liabilities currently held	03:48	12	Q. It's almost the exact same thing as what's	03:49
13	by Spinco need to be moved to Kerr-McGee and vice	03:48	13	described a year earlier by Simpson Thacher in	03:49
14	versa." Do you see that?	03:48	14	connection with the Project Titan spinoff analysis;	03:49
15	MR. BILLECK: Object to the form.	03:48	15	correct?	03:49
16	WITNESS: This is what it says, yes.	03:48	16	A. This looks a little different than the	03:49
17	Q. (BY MR. KASSOF): All right. Then if you	03:48	17	other tab, but there's some similarity there.	03:49
18	look at -- go back to the Project Focus, Exhibit 11	03:48	18	Q. Then you go to heading 2, "potential	03:50
19	checklist, you see that again? It's almost identical	03:48	19	impediments to movement, allocation of assets and	03:50
20	in the tasks, except from -- except for the fact that	03:48	20	liabilities," that's what it says on Exhibit 13, the	03:50
21	the version that you got in 2002 for Project Focus	03:48	21	Project Titan spinoff document in 2001; right, sir?	03:50
22	deletes the reference to "Spinco"; correct?	03:48	22	A. I'm looking. It appears to be the same,	03:50
23	A. Yes. It refers to KMOC instead.	03:49	23	yeah.	03:50
24	Q. And no one told you, at the time that you	03:49	24	Q. Okay. When you say "it appears to be the	03:50
25	got this, that this task that was identified in	03:49	25	same," you mean that it's the exact same language	03:50

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1	A. The way you keep saying that, I think	04:06	1	A. That's certainly what this slide suggests.	04:07
2	you're going to try and surprise me with something,	04:06	2	that's what it states.	04:07
3	but I don't recall ever hearing about Titan or any of	04:06	3	Q. I'm going to mark as Exhibit 15 the second	04:07
4	this stuff, no.	04:06	4	Lehman presentation we have dated January 5, 2001.	04:08
5	Q. To kill all the suspense, I'm going to tell	04:06	5	It's a presentation from Lehman Brothers to	04:08
6	you now that I don't have a document that says that	04:06	6	Kerr-McGee titled "Update on Project Titan."	04:08
7	you were in any way in the loop on any of this stuff,	04:06	7	(Addison Exhibit No. 15 marked).	04:08
8	okay?	04:06	8	Q. (BY MR. KASSOF): Do you have that, sir?	04:08
9	A. Okay, good, because I never heard any of	04:06	9	A. I do, yes.	04:08
10	this.	04:06	10	Q. I take it, consistent with your testimony	04:08
11	Q. And then if you look at page 2-19, it says	04:06	11	earlier, you don't recall ever seeing this while you	04:08
12	"Project Titan two-step spinoff transaction," do you	04:06	12	were working on Project Focus or working in	04:08
13	see that, sir?	04:06	13	connection with the spinoff at Kerr-McGee; correct?	04:08
14	A. Yes.	04:07	14	A. Let me try and quickly look at it.	04:08
15	Q. Have you ever heard anybody talk about a	04:07	15	Q. Please do.	04:08
16	spinoff of the Chemical Division as a two-step	04:07	16	A. If the cover sheet date is correct, I don't	04:08
17	spinoff transaction at Kerr-McGee?	04:07	17	think I've seen this or anything like that.	04:08
18	A. No. I've heard of "dual track," but I've	04:07	18	Q. All right. And if you can ask you to look	04:08
19	not heard of two-step.	04:07	19	at page Roman numeral I-1 of the January 5th, 2001	04:09
20	Q. Would you agree with me that in August of	04:07	20	Lehman presentation, do you see that?	04:09
21	2000 Lehman Brothers was describing a possible IPO	04:07	21	At the top it says "executive summary,	04:09
22	and spinoff of the Chemical Division as a two-step	04:07	22	strategic alternative considerations." Are you with	04:09
23	transaction --	04:07	23	me?	04:09
24	MR. BILLECK: Objection, form.	04:07	24	A. Yes. Page 973?	04:09
25	Q. (BY MR. KASSOF): -- correct?	04:07	25	Q. Yes, sir.	04:09
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1	A. Yes, I see it.	04:09	1	a pure play E&P business and that it was being	04:10
2	Q. If you look under "market considerations,"	04:09	2	penalized in the marketplace for its chemical	04:10
3	you see that in January of 2001 Lehman Brothers was	04:09	3	exposures, that's consistent with everything you were	04:10
4	advising Kerr-McGee that investors continue to	04:09	4	hearing during the dual-track process in 2005;	04:10
5	penalize Kerr-McGee for its chemicals exposure.	04:09	5	correct?	04:10
6	Do you see that?	04:09	6	A. When you say "everything," that covers an	04:10
7	A. Yes.	04:09	7	awful lot of stuff.	04:10
8	Q. Lehman Brothers was also telling Kerr-McGee	04:09	8	Q. Sure.	04:10
9	in January of 2001 that a, quote/unquote, pure play	04:09	9	A. I think that generally is correct.	04:10
10	E&P should trade at a higher multiple than Kerr-McGee	04:09	10	Q. And you had no idea that the notion of a	04:10
11	today.	04:09	11	pure play E&P business that would trade at a higher	04:11
12	Do you see that?	04:09	12	value than the combined Oil and Gas and Chemical	04:11
13	A. Yes.	04:09	13	Operations of Kerr-McGee was being proposed by Lehman	04:11
14	Q. First question: Were you aware that Lehman	04:09	14	Brothers all the way back in January of 2001?	04:11
15	Brothers, Kerr-McGee's outside investment banker, was	04:09	15	A. I had no idea.	04:11
16	advising it that it was being penalized in the	04:09	16	Q. If you look at page Roman numeral 1-2 of	04:11
17	marketplace by investors for its chemical exposure as	04:10	17	the January 2001 presentation under "structural	04:11
18	early as January of 2001?	04:10	18	considerations," do you see that?	04:11
19	A. Certainly not that early. Somewhere along	04:10	19	A. Yes.	04:11
20	the line this became kind of the company mantra. The	04:10	20	Q. If you look at the third bullet, in January	04:11
21	outside investors were saying we would be more	04:10	21	of 2001 Lehman Brothers was telling Kerr-McGee that	04:11
22	valuable as a pure play oil and gas company, and it	04:10	22	the legacy liabilities with chemicals and	04:11
23	wasn't getting full value for the chemical business,	04:10	23	discontinued operations was a structural	04:11
24	but I think that was far later than January 2001.	04:10	24	consideration that Kerr-McGee needed to think about;	04:11
25	Q. Right. The company mantra that it would be	04:10	25	correct?	04:11

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1	A. Well, in PowerPoint speak I think that's	04:11	1	considerations," do you see that, third row down?	04:13
2	what the bullet joint suggests, yes.	04:12	2	A. Oh, oh, okay: Yes, I do see it.	04:13
3	Q. That's what you would read that to mean	04:12	3	Q. One of the issues and considerations that	04:13
4	looking at the document; right?	04:12	4	Lehman Brothers was flagging for Kerr-McGee in 2001	04:13
5	A. It's something to consider, yes.	04:12	5	was that the legacy environmental issues could	04:13
6	Q. And in January of 2001 Lehman Brothers is	04:12	6	possibly be left with Titan -- that's left with the	04:13
7	telling Kerr-McGee to consider and think about, in	04:12	7	Chemical business -- should Kerr-McGee choose to spin	04:13
8	your strategic alternatives for the Chemical	04:12	8	off the E&P business instead.	04:13
9	Division, the legacy liabilities with chemicals and	04:12	9	Do you see that?	04:13
10	discontinued operations; correct?	04:12	10	MR. BILLECK: Objection, form.	04:13
11	A. Yes.	04:12	11	WITNESS: I see that. That's what it seems	04:13
12	Q. Then if you look at -- let's go to page	04:12	12	to suggest	04:13
13	Roman numeral I-10 of the January 2001	04:12	13	Q. (BY MR. KASSOF): And did you know, at the	04:13
14	presentation --	04:12	14	time that you were working on Project Focus, that	04:13
15	A. Yes.	04:12	15	Lehman Brothers, long before then, a year before	04:13
16	Q. -- there's a discussion of a summary of	04:12	16	exactly, was talking about strategic alternatives and	04:13
17	alternatives. On the right-hand side of the chart is	04:12	17	spinoffs for Kerr-McGee that would allow Kerr-McGee	04:13
18	something called a "straight splitoff or spinoff."	04:12	18	to possibly leave the legacy environmental issues	04:14
19	Do you see that?	04:12	19	with the chemical business and not the E&P business?	04:14
20	A. Hang on a second. I may have the wrong	04:12	20	MR. BILLECK: Objection.	04:14
21	page. You said it was -- oh, on the right side?	04:13	21	Q. (BY MR. KASSOF): Were you aware of that?	04:14
22	Q. Yes, sir.	04:13	22	MR. BILLECK: Objection, form.	04:14
23	A. I misunderstood.	04:13	23	WITNESS: I was not aware of that.	04:14
24	Yes, I see that.	04:13	24	Q. (BY MR. KASSOF): And did you know that that	04:14
25	Q. And if you look under "issues and	04:13	25	was known to Kerr-McGee at the time that you were	04:14
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1	doing -- and others were working on Project Focus?	04:14	1	A. I see those words, yes.	04:15
2	MR. BILLECK: Objection, form.	04:14	2	Q. Then underneath it, where it talks about	04:15
3	WITNESS: No, I did not know that.	04:14	3	issues and considerations, Lehman Brothers, as early	04:15
4	Q. (BY MR. KASSOF): If you look at the very	04:14	4	as January of 2001, is raising as an issue and	04:15
5	next page -- right now we're talking about on I-10	04:14	5	consideration, quote, what is the Titan story for	04:15
6	discussions about a straight spinoff or splitoff	04:14	6	investors?	04:15
7	option; right?	04:14	7	Do you see that?	04:15
8	Then if you look at the I-11 of the January	04:14	8	A. No. What do you mean? What is the	04:15
9	2001 presentation, can you look down at the issues	04:14	9	Titan --	04:15
10	and considerations, do you see that?	04:14	10	Q. Third bullet down under the IPO splitoff --	04:15
11	A. I see the heading. Which column?	04:14	11	A. There it is. I'm sorry. I was looking at	04:15
12	Q. On the executive summary on the left-hand	04:15	12	the wrong line.	04:15
13	side, sir.	04:15	13	Q. Do you see that?	04:15
14	A. All right.	04:15	14	A. Yes.	04:15
15	Q. Again, we're under the IPO splitoff or	04:15	15	Q. So in January of 2001, when there's all	04:15
16	spinoff option; right?	04:15	16	this talk about a splitoff or spinoff, one of the	04:16
17	A. Uh-huh.	04:15	17	issues or considerations that Lehman Brothers flagged	04:16
18	Q. In fact, before we even get to the issues,	04:15	18	for Kerr-McGee was, as a question, what is the Titan	04:16
19	if you look under the advantages, the second row?	04:15	19	story for investors? Do you see that?	04:16
20	A. Yes.	04:15	20	MR. BILLECK: Objection, form.	04:16
21	Q. You see the third bullet says that one of	04:15	21	WITNESS: Yes, I see that.	04:16
22	the advantages of this spinoff, back in January of	04:15	22	Q. (BY MR. KASSOF): They put "story" in	04:16
23	2001, would be that it would provide a complete	04:15	23	quotes; right?	04:16
24	separation, evidencing strategic clarity.	04:15	24	A. It's in quotation marks, correct.	04:16
25	Do you see that?	04:15	25	Q. Meaning, as a person looking at this	04:16

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1	WITNESS: When you say back to back,	04:26	1	to three options; right?	04:28
2	they're, what, four, five months apart, but, yes, I	04:26	2	A. That is what it says.	04:28
3	guess you can say that's back to back.	04:26	3	Q. And one of the ones that they eliminated	04:28
4	Q. (BY MR. KASSOF): Right.	04:26	4	was the tracking stock alternative; true?	04:28
5	This theme that investors were penalizing	04:26	5	MR. BILLECK: Objection, form.	04:28
6	Kerr-McGee for its chemical exposure and that a pure	04:26	6	WITNESS: I mean, it's on this chart, but	04:28
7	play E&P business would trade at a higher multiple,	04:26	7	it's down there under --	04:28
8	that's the same theme as you mentioned earlier that	04:27	8	Q. (BY MR. KASSOF): If you look at slide I-12,	04:28
9	would be consistent with the mantra that Kerr-McGee	04:27	9	which is the next slide --	04:28
10	was touting in 2005; true?	04:27	10	A. Oh, okay.	04:28
11	A. It appears to be, yes.	04:27	11	Q. -- I think it will be clear to you that the	04:28
12	Q. And every time you heard that mantra, you	04:27	12	tracking stock alternative was eliminated as one of	04:28
13	had no idea that it was told to Kerr-McGee as a	04:27	13	the proposed strategic options?	04:28
14	consideration for them to assess all the way back in	04:27	14	A. Okay. Do you want me to look at I-12 or --	04:28
15	2001; right?	04:27	15	Q. Either one.	04:28
16	MR. BILLECK: Objection, form.	04:27	16	A. Okay. Let me look at I-12.	04:28
17	WITNESS: I'm very surprised that those	04:27	17	Yes, I agree, it looks like they deleted	04:28
18	words were used in that time frame.	04:27	18	the tracking stock on page I-12.	04:28
19	Q. (BY MR. KASSOF): If you look at slide I-11,	04:27	19	Q. The option that Lehman Brothers told	04:28
20	executive summary range of strategic alternatives.	04:27	20	Kerr-McGee -- the strategic alternative for the	04:28
21	It ends with Bates number 893 --	04:27	21	Chemical Division that would still allow the oil and	04:28
22	A. Yes.	04:27	22	gas assets to be attached to the legacy liabilities	04:28
23	Q. -- you'll notice that Lehman Brothers was	04:27	23	was eliminated by Lehman Brothers as an alternative	04:28
24	telling Kerr-McGee that after looking at a number of	04:27	24	as of April 2001; right?	04:28
25	strategic alternatives, they narrowed the list down	04:28	25	MR. BILLECK: Objection, form.	04:29
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1	Q. (BY MR. KASSOF): That's what it appears to	04:29	1	page jogged my memory on.	04:30
2	you, doesn't it, sir?	04:29	2	Q. Sure.	04:30
3	A. I'm sorry. I got distracted by the spinoff	04:29	3	A. I may be totally wrong. My testimony	04:30
4	Kronos. I don't know how that got in there. I just	04:29	4	earlier -- speaking at one time I thought Kerr-McGee	04:30
5	got confused. I'm sorry.	04:29	5	was looking at Kronos, and it was unsuccessful	04:30
6	Q. Do you want me to reask my question?	04:29	6	because of environmental issues or something. I see	04:30
7	A. Would you, please?	04:29	7	the word Kronos here on this page I-12 and I -- it	04:30
8	Q. Sure.	04:29	8	seems like in association with Kronos, I once heard	04:30
9	A. I apologize.	04:29	9	the time Project Titan perhaps.	04:30
10	Q. The tracking stock alternative that Lehman	04:29	10	Remember I said Project Apollo was the	04:30
11	Brothers highlighted for Kerr-McGee as having one of	04:29	11	Kemira acquisition and Project Hawk was the HS? You	04:31
12	the negatives that the oil and gas assets would still	04:29	12	know somewhere I vaguely recall, tied in with a look	04:31
13	be attached to the legacy liabilities but not be	04:29	13	at purchasing Kronos, they may have called it Titan	04:31
14	isolated from the legacy liabilities, that was	04:29	14	or something.	04:31
15	eliminated by Lehman Brothers as one of the possible	04:29	15	Maybe I shouldn't even have said that, but	04:31
16	strategic alternatives for Kerr-McGee to pursue as of	04:29	16	I testified earlier I'd never heard Titan. It just	04:31
17	April 2001; correct?	04:29	17	dawned on me I may have heard it in association with	04:31
18	MR. BILLECK: Objection, form.	04:29	18	looking at Kronos.	04:31
19	WITNESS: That certainly appears to be what	04:29	19	Q. But certainly not in association with a	04:31
20	the conclusion is on this page.	04:29	20	possible spinoff of the Chemical operation as of	04:31
21	Q. (BY MR. KASSOF): And spinoff options were	04:29	21	April of 2001; correct?	04:31
22	still on the table as of April 2001; correct?	04:29	22	A. Correct.	04:31
23	A. Yes, there are two spinoff options	04:30	23	Q. If you can turn to page I-19, there's an	04:31
24	mentioned.	04:30	24	executive summary provided by Lehman Brothers in this	04:31
25	I would like to mention something that this	04:30	25	April 2001 presentation.	04:31

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1	what I've said earlier, that they kept talking about	05:09	1	as Addison Exhibit 18, a memorandum. It's identified	05:11
2	this pure play oil and gas company, and that it would	05:09	2	on the top as a draft of July 12, 2002 from Simpson	05:11
3	be after the proposed spinoff or sale of Chemical,	05:09	3	Thacher & Bartlett. The Bates number at the bottom	05:11
4	which later became Tronox.	05:09	4	is KMTRX566713.	05:11
5	I don't recall emphasis being on separating	05:09	5	Do you have that, sir?	05:11
6	the legacy liabilities from the oil and gas entity,	05:09	6	A. I see that, yes.	05:11
7	but it was sort of understood and a given that that's	05:10	7	Q. All right. You see that the recipients of	05:11
8	what was occurring. It was also a function of that	05:10	8	this memorandum were Mr. Pilcher and Mr. Wohleber and	05:11
9	assignment and assumption agreement, slash,	05:10	9	Mr. Reichenberger, right?	05:12
10	assignment assumption and indemnity agreement, the	05:10	10	A. Yes, those are listed under the "to"	05:12
11	reciprocal agreements.	05:10	11	heading.	05:12
12	So when you say, was I aware of any	05:10	12	Q. You're not identified; correct?	05:12
13	discussion of that, to the extent I just mentioned,	05:10	13	A. Do not appear to be, no.	05:12
14	yes, in the 2005 time frame, starting sometime in mid	05:10	14	Q. And you have no reason to believe that you	05:12
15	March, I guess I did hear that.	05:10	15	ever got this memo either, true?	05:12
16	Q. And you referenced the assignment and	05:10	16	A. Let me look.	05:12
17	assumption and the indemnity agreement and the	05:10	17	I need to mention that the memo itself	05:12
18	conversations about separating out the oil and gas	05:10	18	doesn't look at all familiar, neither do the -- or	05:13
19	assets from the legacy liabilities in 2005, because	05:10	19	the exhibits. But in the far back are a number of	05:13
20	that would be consistent with the desire to have	05:10	20	charts showing new entities, things like that, which	05:13
21	those oil and gas assets clean from the legacy	05:10	21	seem vaguely familiar as Project Focus was at one	05:13
22	liabilities; correct?	05:10	22	time explained to me or something.	05:13
23	A. I'm going to say yes.	05:10	23	I mean, should I hold these up for the	05:13
24	(Addison Exhibit No. 18 marked).	05:11	24	camera? I don't know what they really even say here.	05:13
25	Q. (BY MR. KASSOF): Mr. Addison, I'm marking,	05:11	25	Maybe I'll look at this page number. Some of this	05:13
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1	stuff looks familiar.	05:13	1	chart listing various steps of a revised transaction	05:14
2	Q. Well, let me help you out.	05:13	2	step plan under a memo by Simpson Thacher in July of	05:14
3	A. Okay.	05:13	3	2002; right?	05:14
4	Q. Let me help you out.	05:13	4	A. Yeah, the revised transaction step plan	05:14
5	A. But I don't remember ever seeing the memo.	05:13	5	appears to be annex B to the memo.	05:14
6	Q. You've got -- attached to this memo is a	05:13	6	Q. And we're in -- just again to orient	05:15
7	step-by-step plan, revised transaction plan, with a	05:13	7	ourselves on the time line, we're in July 2002, which	05:15
8	number of organizational charts; is that right?	05:13	8	is smack dab in the middle of Project Focus, right,	05:15
9	MR. BILLECK: Objection, form.	05:13	9	which lasted from January of 2002 through -- well, at	05:15
10	Q. (BY MR. KASSOF): Is that correct, sir? Is	05:13	10	least the closing -- I'll put that in quotes -- was	05:15
11	that how you see it? Is that how you read it?	05:13	11	December 31, 2002; right?	05:15
12	A. You know, I didn't even look at all those	05:13	12	A. I think so.	05:15
13	pages. I just recognized, I think, some of the	05:13	13	Q. And this is --	05:15
14	revised transaction step plan sheets that are in	05:14	14	A. You keep asking me about Project Focus. My	05:15
15	annex B.	05:14	15	recollection is, I had -- even though I got these	05:15
16	Q. Right. And you'll recall, when we looked	05:14	16	memos, I had very, very little involvement. It was	05:15
17	back at both the Project Titan spinoff checklist that	05:14	17	primarily Dwayne Morris.	05:15
18	Simpson Thacher put together in 2001 and the Project	05:14	18	This was the time I was moving from	05:15
19	Focus reorganization checklist that Simpson Thacher	05:14	19	business transactions to the Chemical Division	05:15
20	put together, which you saw in 2005, there was an	05:14	20	assistant general counsel and was tasked with trying	05:15
21	identification of putting together detailed steps to	05:14	21	to sell some assets there. I'd get copied in on this	05:15
22	effectuate this reorganization; correct?	05:14	22	stuff but did not spend much time or investment or	05:15
23	MR. BILLECK: Objection, form.	05:14	23	intellectual curiosity at all in it.	05:15
24	WITNESS: Yes.	05:14	24	Q. My question was a little more focused.	05:16
25	Q. (BY MR. KASSOF): And on this memoranda is a	05:14	25	A. Okay.	05:16

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1	Q. I said, Project Focus kicked off in January	05:16	1	A. Yes.	05:17
2	of 2002, which we saw; right?	05:16	2	Q. And then the next bullet says -- has a	05:17
3	A. Yes.	05:16	3	reference to how to effectuate a straight spinoff of	05:17
4	Q. You know, from the backdating of the	05:16	4	Titan, the Chemical business, and how to effectuate	05:17
5	assignment, assumption and indemnity agreement, that	05:16	5	that; right?	05:17
6	it purported to close on December 31, 2002; right?	05:16	6	MR. BILLECK: Objection, form.	05:17
7	A. Yes, it was supposed to be effective	05:16	7	WITNESS: That's what it seems to show,	05:17
8	December 31, 2002.	05:16	8	yes.	05:17
9	Q. This memo I just put in front of you as	05:16	9	Q. (BY MR. KASSOF): So during the middle of	05:17
10	Addison Exhibit 18 is dated July 12, 2002; right?	05:16	10	Project Focus, Simpson Thacher & Bartlett is	05:17
11	A. Yes.	05:16	11	providing a memorandum to certain people at	05:17
12	Q. Right in the middle of Project Focus?	05:16	12	Kerr-McGee -- not you -- describing the steps of	05:17
13	A. That's correct.	05:16	13	Project Focus and also how to, upon completion of	05:17
14	Q. And if you look at the first paragraph,	05:16	14	Project Focus, effectuate a straight spinoff of the	05:17
15	what Simpson Thacher is describing is an analysis	05:16	15	chemical operations; true?	05:17
16	that they did of debt covenants and restrictions that	05:16	16	MR. BILLECK: Objection, form.	05:17
17	were imposed on the consummation of certain specified	05:16	17	Q. (BY MR. KASSOF): Is that what it appears to	05:17
18	corporate transactions following the completion of	05:16	18	be to you, sir?	05:17
19	Project Focus. Do you see that?	05:16	19	A. Yes.	05:17
20	A. Yes.	05:16	20	Q. And if you look at the -- do you see that	05:17
21	Q. And the first bullet talks about Project	05:16	21	Project Focus is described as having 11 steps in that	05:18
22	Focus will include steps 1 through 11; right?	05:16	22	first bullet by Simpson Thacher?	05:18
23	A. That's what it says, yes.	05:17	23	A. Yes.	05:18
24	Q. It says that's attached as annex B, which	05:17	24	Q. If you look after step 11, and the page on	05:18
25	we looked at earlier; right?	05:17	25	the document ends in Bates number 736, do you see	05:18
Page 288			Page 289		
1	that?	05:18	1	A. They do seem related, yes.	05:19
2	A. Let me get there. I do see it.	05:18	2	Q. Simpson Thacher is emphasizing this in	05:19
3	Q. There is a note, and it's in bold, that	05:18	3	March of 2002 and again in July of 2002; right?	05:19
4	says, confirm that KMOGC is a, quote, clean corporate	05:18	4	They are emphasizing the need to confirm	05:19
5	entity for purposes of holding company structure.	05:18	5	that the oil and gas corporation is quote/unquote	05:19
6	Do you see that?	05:18	6	clean from the environmental legacy liabilities;	05:19
7	A. Yes.	05:18	7	right?	05:19
8	Q. That is a note that Simpson Thacher	05:18	8	MR. BILLECK: Objection, form.	05:19
9	Bartlett put on this memo to Mr. Pilcher,	05:18	9	Q. (BY MR. KASSOF): Right, sir? Is that how	05:19
10	Mr. Wohleber, and Mr. Reichenberger, right?	05:18	10	it appears to you?	05:19
11	MR. BILLECK: Objection to form.	05:18	11	A. It appears, yes. I'm just -- the	05:20
12	Q. (BY MR. KASSOF): That's the way it appears	05:18	12	handwritten note from the unidentified person is on	05:20
13	to you, sir?	05:18	13	something dated -- well, it's undated, but appears to	05:20
14	A. That's what it appears to say, yes.	05:18	14	be as of March 22nd, and this Simpson Thacher thing	05:20
15	Q. And the confirmation that's requested by	05:18	15	is a few months later, in July.	05:20
16	Simpson Thacher that Kerr-McGee Oil & Gas Corporation	05:18	16	Q. One of the people who received the memo in	05:20
17	is quote/unquote clean at the end of Project Focus is	05:18	17	July was Mr. Pilcher; right?	05:20
18	entirely consistent with the note that we just looked	05:19	18	MR. BILLECK: Objection, form.	05:20
19	at on the Project Focus checklist that said that	05:19	19	WITNESS: Yes, he's the principal	05:20
20	Simpson Thacher wants to know if Kerr-McGee Oil & Gas	05:19	20	recipient.	05:20
21	Corporation is quote/unquote clean from the legacy	05:19	21	Q. (BY MR. KASSOF): So that takes us midway	05:20
22	liabilities; right?	05:19	22	through 2002. Project Focus continues throughout the	05:20
23	MR. BILLECK: Objection, form.	05:19	23	rest of 2002 at least, right, to your knowledge?	05:21
24	Q. (BY MR. KASSOF): Is that how it appears to	05:19	24	A. You know, I don't remember. I don't even	05:21
25	you, sir?	05:19	25	recall. I was consumed with other things.	05:21

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1	sorts of references to Spinco and spinoff and	05:36	1	WITNESS: I had absolutely no idea.	05:37
2	movement of assets and liabilities in connection with	05:36	2	Q. (BY MR. KASSOF): And the first time you're	05:37
3	a spinoff, true?	05:36	3	hearing anything about Simpson Thacher providing the	05:37
4	MR. BILLECK: Object to the form.	05:36	4	very similar analysis in both 2001 and then again	05:38
5	WITNESS: I'm flipping through the	05:36	5	after 2002, in Project Focus, right immediately in	05:38
6	document. I mean, there's a responsible parties	05:36	6	2003, is right now sitting here answering my	05:38
7	column on virtually every page that does make	05:36	7	questions, fair?	05:38
8	repeated mention to a Spinco.	05:36	8	MR. BILLECK: Objection, form.	05:38
9	Q. (BY MR. KASSOF): That's in the 2003 version	05:37	9	WITNESS: That is correct.	05:38
10	and the 2001 version, but it's deleted from the 2002	05:37	10	Q. (BY MR. KASSOF): Before right now, you had	05:38
11	Project Focus version; right?	05:37	11	absolutely no idea that Project Focus did, in fact,	05:38
12	MR. BILLECK: Objection, form.	05:37	12	have everything to do about the steps to be taken in	05:38
13	WITNESS: I think you're correct. Let me	05:37	13	connection with a spinoff of the Chemical business;	05:38
14	just make a quick -- I don't recall ever seeing	05:37	14	true?	05:38
15	Spinco in the Project Focus version, which is -- just	05:37	15	MR. BILLECK: Objection, form.	05:38
16	to be clear, it's in Exhibit 11. It's in the other	05:37	16	WITNESS: That's correct.	05:38
17	two. Yes, Exhibit 11. Project Focus.	05:37	17	Q. (BY MR. KASSOF): And you agree with my	05:38
18	Q. (BY MR. KASSOF): Sir, when you testified in	05:37	18	characterization based on the documents that you are	05:38
19	response to questions from Anadarko and Kerr-McGee's	05:37	19	seeing for the first time here today under oath;	05:38
20	counsel about Project Focus, did you have any idea	05:37	20	right?	05:38
21	that both before and after Project Focus, Simpson	05:37	21	MR. BILLECK: Objection, form.	05:38
22	Thacher was advising Kerr-McGee about steps to be	05:37	22	WITNESS: Yes, but it also fits with the	05:38
23	taken to effectuate a spinoff of the Chemical	05:37	23	memo Mr. Pilcher did about the legitimate business	05:39
24	operations?	05:37	24	purposes, also. I mean --	05:39
25	MR. BILLECK: Objection, form.	05:37	25	Q. (BY MR. KASSOF): Which is entirely	05:39
Page 304			Page 305		
1	consistent with the advice that Lehman Brothers gave	05:39	1	STATE OF OKLAHOMA )	
2	to Kerr-McGee about coming up with a valid business	05:39	2	)SS	
3	purpose when you want to perform a spinoff company --	05:39	3	COUNTY OF _____)	
4	a spinoff of the Chemical business to leave the	05:39	4	CORRECTIONS NOTED _____	
5	legacy liabilities behind and have them totally	05:39	5	NO CORRECTIONS NOTED _____	
6	unattached to the oil and gas assets; true?	05:39	6		
7	MR. BILLECK: Objection, form.	05:39	7	I, ROGER ADDISON, do hereby state under oath	
8	WITNESS: I think that's correct, yes.	05:39	8	that I have read the above and foregoing deposition	
9	MR. KASSOF: Why don't we break for the	05:39	9	in its entirety and that the same is a full, true and	
10	evening and pick up in the morning?	05:39	10	correct transcription of my testimony so given at	
11	MR. WALTERS: Nine o'clock?	05:39	11	said time and place, except for the corrections	
12	MR. BILLECK: Sounds good.	05:39	12	noted.	
13	MR. WALTERS: We'll be here.	05:39	13		
14	VIDEOGRAPHER: Going off the record. The	05:39	14		
15	time is now 5:38 p.m.	05:39	15		
16	(DEPOSITION CONCLUDED)	05:39	16	ROGER ADDISON	
17			17		
18			18	Subscribed and sworn to before me, the	
19			19	Notary Public in and for the State of Oklahoma, by	
20			20	said witness on this the _____ day of _____,	
21			21	2010.	
22			22		
23			23	NOTARY PUBLIC	
24			24	My Commission Expires: _____	
25			25		

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1	ERRATA SHEET	1	CERTIFICATE
2	DEPOSITION OF ROGER ADDISON	2	
3	REPORTER: Sherri S. Grubbs, CSR, RPR, RMR, RDR, CRR	3	STATE OF OKLAHOMA )
4	DATE DEPOSITION TAKEN: July 13, 2010	4	) SS
5		5	COUNTY OF OKLAHOMA)
6	Page Line Correction	6	I, SHERRI S. GRUBBS, Certified Shorthand
7		7	Reporter within and for the State of Oklahoma, do
8		8	hereby certify that the above-named ROGER ADDISON was
9		9	by me first duly sworn to testify the truth, the
10		10	whole truth, and nothing but the truth, in the case
11		11	aforesaid; that the above and foregoing deposition
12		12	was by me taken in shorthand and thereafter
13		13	transcribed; that the same was taken on July 13,
14		14	2010, in Oklahoma City, Oklahoma, pursuant to
15		15	agreement, and under the stipulations hereinbefore
16		16	set out; and that I am not an attorney for nor
17		17	relative of any of said parties or otherwise
18		18	interested in the event of said action.
19		19	IN WITNESS WHEREOF, I have hereunto set my
20		20	hand and official seal this 14th day of July, 2010.
21		21	
22		22	
23		23	SHERRI GRUBBS, CSR, RPR, RMR, RDR
24		24	State of Oklahoma CSR No. 1232
25		25	

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# **EXHIBIT B**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE SOUTHERN DISTRICT OF OKLAHOMA

3  
4 IN RE: ) Chapter 11  
TRONOX INCORPORATED, et al., ) No. 09-10156  
Debtors. ) Jointly Administered  
5 )  
6 TRONOX INCORPORATED, TRONOX )  
WORLDWIDE LLC, f/k/a KERR-MCGEE )  
7 CHEMICAL WORLDWIDE LLC, and )  
TRONOX LLC, f/k/a KERR-MCGEE )  
CHEMICAL, LLC, )  
8 Plaintiffs, ) Adversary Proceeding  
-vs- ) No. 09-01198 (ALG)  
9 ANADARKO PETROLEUM CORPORATION )  
and KERR-MCGEE CORPORATION, )  
10 Defendants. )  
11 THE UNITED STATES OF AMERICA, )  
Plaintiff-Intervenor, )  
12 -vs- )  
13 TRONOX INC., TRONOX WORLDWIDE )  
LLC, TRONOX LLC, KERR-MCGEE )  
CORPORATION, and ANADARKO )  
14 PETROLEUM CORPORATION, )  
Defendants. )  
15  
16

17 VIDEOTAPED DEPOSITION OF ROGER ADDISON, VOLUME II  
18 TAKEN ON BEHALF OF THE TRONOX  
19 IN OKLAHOMA CITY, OKLAHOMA  
20 ON JULY 14, 2010  
21  
22

23 TSG REPORTING, INC.  
NEW YORK, NEW YORK  
24 REPORTED BY: LORI A. JOHNSTON, CSR, RPR, CLR  
25 TSG JOB NO.: 31426

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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR TRONOX:</p> <p>4 Andrew A. Kassof</p> <p>5 David H. DeCellis</p> <p>6 Attorneys at Law</p> <p>7 Kirkland &amp; Ellis LLP</p> <p>8 300 North LaSalle</p> <p>9 Chicago, IL 60654</p> <p>10</p> <p>11 FOR ANADARKO PETROLEUM CORPORATION:</p> <p>12</p> <p>13 Jason W. Billeck</p> <p>14 Attorney at Law</p> <p>15 Weil Gotshal &amp; Manges LLP</p> <p>16 700 Louisiana</p> <p>17 Suite 1600</p> <p>18 Houston, TX 77002</p> <p>19 -and-</p> <p>20 Jessie B. Mishkin</p> <p>21 Attorney at Law</p> <p>22 Weil Gotshal &amp; Manges</p> <p>23 767 Fifth Avenue</p> <p>24 New York, NY 10153-0119</p> <p>25 -and-</p> <p>26 Duke K. McCall, III</p> <p>27 Attorney at Law</p> <p>28 Bingham McCutchen LLP</p> <p>29 2020 K Street, NW</p> <p>30 Washington, DC 20006-1806</p> <p>31 -and-</p> <p>32 Jennifer Edwards</p> <p>33 Senior Attorney</p> <p>34 Anadarko Petroleum Company</p> <p>35 1201 Lake Robbins Drive</p> <p>36 The Woodlands, TX 77380</p> <p>37 FOR UNITED STATES DEPARTMENT OF JUSTICE:</p> <p>38 Katherine M. Kane</p> <p>39 Trial Attorney</p> <p>40 US Department of Justice</p> <p>41 ENRD Mailroom, Room 2121</p> <p>42 601 D Street, NW</p> <p>43 Washington, D.C. 20004</p>	<p>1 FOR UNSECURED CREDITORS COMMITTEE:</p> <p>2 Ross G. Shank</p> <p>3 Attorney at Law</p> <p>4 Kasowitz, Benson, Torres &amp; Friedman</p> <p>5 1633 Broadway</p> <p>6 New York, NY 10019-1800</p> <p>7 FOR THE WITNESS:</p> <p>8 Kevin Donelson</p> <p>9 Jay Walters</p> <p>10 Attorneys at Law</p> <p>11 Fellers Snider Blankenship Bailey &amp; Tippens</p> <p>12 1700 Chase Tower</p> <p>13 100 North Broadway</p> <p>14 Oklahoma City, OK 73102</p> <p>15 ALSO PRESENT:</p> <p>16 Robert Rusch, Videographer</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 INDEX</p> <p>2 Page</p> <p>3 Roger Addison</p> <p>4 CONTINUED DIRECT EXAMINATION by MR. KASSOF 316:8</p> <p>5 EXHIBITS</p> <p>6 For Deposition:</p> <p>7 Exhibit 1 witness statement of Roger</p> <p>8 Addison from the Komira arbitration</p> <p>9 Previously Marked 349:20</p> <p>10 Exhibit 23 E-mail from Roger Addison to</p> <p>11 John Reichenberger, Bill Laython, Justin</p> <p>12 Byrne, May 9, 2005 321:9</p> <p>13 Exhibit 24 e-mail from Roger Addison to Bill Laython and</p> <p>14 Justin Byrne For Identification 373:20</p> <p>15 Exhibit 25 string of e-mails dated July</p> <p>16 15 to July 18, 2005 339:13</p> <p>17 Exhibit 26 e-mail dated April 6th, 2005</p> <p>18 For Identification 342:6</p> <p>19 Exhibit 27 letter from the EPA on April</p> <p>20 8th, 2005, associated with Manville</p> <p>21 For Identification 342:8</p> <p>22 Exhibit 28 subsequent draft of the</p> <p>23 assignment and assumption agreement dated</p> <p>24 April 18th 342:12</p> <p>25 Exhibit 29 offer from Kerr-McGee</p> <p>Corporation regarding Savannah and Botlek</p> <p>facilities 348:21</p> <p>Exhibit 30 memorandum that Mr. Montgomery</p> <p>sent to Peter Nickles 355:9</p> <p>For Identification</p> <p>Exhibit 31 e-mail from B.J. Montgomery to</p>	<p>1 Peter Nickles</p> <p>2 For Identification 363:21</p> <p>3 Exhibit 32 e-mail from Mr. Homburg dated</p> <p>4 December 27th, 1999, to Mr. Reichenberger and</p> <p>5 Mr. Addison 369:8</p> <p>6 Exhibit 33 summary of a meeting with the</p> <p>7 Georgia Environmental Protection Department</p> <p>8 dated 370:18</p> <p>9 Exhibit 34 e-mail sent to Joe Flake</p> <p>10 copied to Harold Homburg and John</p> <p>11 Reichenberger on December 27, 1999, by Roger</p> <p>12 Addison 374:11</p> <p>13 Exhibit 35 e-mail from Mr. Pilcher to</p> <p>14 Roger Addison, dated June 24th, 2005,</p> <p>15 attaching a summary of Apollo management bid</p> <p>16 For Identification 378:13</p> <p>17 Exhibit 36 e-mail from Roger Addison to</p> <p>18 Mr. Pilcher on June 24th, 2005 378:15</p> <p>19 Exhibit 37 e-mail string between Roger</p> <p>20 Addison and Mr. Pilcher starting and ending on</p> <p>21 September 10th, 2005 389:19</p> <p>22 Exhibit 38 e-mail, April 15th, 2005, from</p> <p>23 Morgan Lewis 396:14</p> <p>24 Exhibit 39 July 28th, 2005, e-mail from</p> <p>25 Roger Addison to Mr. Reichenberger, Garrison,</p> <p>and Mr. Cubbage 398:12</p> <p>Exhibit 40 cover e-mail from Roger</p> <p>Addison to T.L. Cubbage 401:13</p> <p>Exhibit 41 memorandum from Mr. Cubbage to</p> <p>Roger Addison, dated July 28th, 2005 404:01</p>

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1	Exhibit 43 administrative order on	1	Exhibit 57 February 5th, 2003 memorandum
2	consent from the United States Environmental		For Identification 504:1
3	Protection Agency, dated March 31, 2000	2	Exhibit 58 July 16th, 2002, memo by Sam
4	For Identification 417:21	3	Haywood to Elliott Schaulder
5	Exhibit 44 e-mail that Roger Addison sent		For Identification 509:3
6	to Mary Mikkelsen on or about January 22nd,	4	Exhibit 60 memo, dated July 7th, 2005
7	2005	5	For Identification 521:7
8	For Identification 437:17	6	Exhibit 61 e-mail from Michael Chambers
9	Exhibit 45 e-mail string		at Akin Gump to Addison, Byrne, and Mikkelsen
10	For Identification 441:13	7	For Identification 330:17
11	Exhibit 46 e-mail that appears to be	8	Exhibit 62 e-mail exchange
12	dated July 6, 2006		For Identification 535:9
13	For Identification 449:13	9	Exhibit 63 e-mail string
14	Exhibit 47 Covington & Burling memorandum	10	For Identification 543:9
15	For Identification 463:1	11	Exhibit 64 e-mail train that begins on
16	Exhibit 48 letter from the United States		October 13th, 2005, and goes through October
17	Environmental Protection Agency to Kerr-McGee	12	17th,
18	Corporation		For Identification 549:22
19	For Identification 467:11	13	Exhibit 65 e-mail string again that went
20	Exhibit 49 letter from the EPA, dated		from Mr. Chambers up through Ms. Roberts, to
21	July 6, 1999, to Kerr-McGee Corporation	14	Roger Addison
22	For Identification 468:2	15	For Identification 551:8
23	Exhibit 52 July 25th, 2002 Covington &	16	Exhibit 66 cover e-mail from Melody Walke
24	Burling memo		to individuals, including Roger Addison
25	For Identification 485:3	17	For Identification 560:6
1	Exhibit 53 memorandum by Covington &	18	Exhibit 67 EPA unilateral administrative
2	Burling dated September 13th, 2000		order for removal options at West Chicago
3	For Identification 487:24	19	For Identification 566:14
4	Exhibit 54 May 10th, 2005, memorandum by	20	Exhibit 68 memorandum from Lawrence Young
5	Covington & Burling		to Greg Pilcher, dated November 19th, 1998
6	For Identification 493:3	21	For Identification 573:10
7	Exhibit 55 Covington & Burling memo dated	22	Exhibit 69 memorandum attaching a
8	November 22nd, 2002		presentation, which I believe is by Arthur
9	For Identification 501:12	23	Andersen
10	Exhibit 56 March 11, 2003 memo from		For Identification 576:7
11	Covington & Burling	24	Exhibit 70 e-mail from Addison to
12	For Identification 502:23	25	Mr. Owens dated September 27th, 2007 584:15
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1	Exhibit 71 e-mail exchange between	1	THE VIDEOGRAPHER: Going back on the record 08:52:0
2	Addison and James Crumpley, copied to Mary	2	The time is now 9:11 a.m.
3	Mikkelsen	3	ROGER ADDISON 08:52:09
4	For Identification 587:15	4	Of lawful age, having been first duly sworn, deposes and 08:52:09
5	Exhibit 72 e-mail from Mr. Crumpley to	5	says in reply to the questions propounded as follows:
6	Mary Mikkelsen	6	CONTINUED DIRECT EXAMINATION 08:52:0
7	For Identification 588:21	7	BY MR. KASSOF: 08:52:09
8	Exhibit 73 e-mail from Ms. Mikkelsen to	8	Q Good morning, Mr. Addison. 09:12:59
9	James Crumpley and others at the McKinney	9	A Good morning. 09:12:59
10	Stringer	10	Q You understand you're still under oath; 09:13:01
11	For Identification 590:23	11	correct, sir?
12	Exhibit 74 e-mail exchange with the Bates	12	A Yes, I do. 09:13:03
13	numbers TRX-TAMM-118999 through 19000	13	Q All right. Yesterday, we talked about the 09:13:05
14	For Identification 593:18	14	assignment assumption and indemnity agreement. Do you
15	Exhibit 37 Adams compilation of a number of	15	remember that?
16	presentations	16	A Are you talking about the one that tied in with 09:13:16
17	Previously Marked 426:18	17	Project Focus and related back to, I think, the date of
18	Exhibit 43 Adams Adams Exhibit 43	18	December 31st, 2002? That agreement? Yes.
19	Previously Marked 419:12	19	Q Absolutely correct. 09:13:25
20	Exhibit 76 Adams purchase and sale of real	20	Can you hand -- can you put in front of you 09:13:27
21	property agreement was for four parcels of	21	what we marked previously as Exhibit 5?
22	land in Henderson, Nevada	22	A I'll find it. Yeah. 09:13:30
23	Previously Marked 425:18	23	Q This one. (Indicating). 09:13:31
24		24	A Thank you. 09:13:31
25		25	Q And you testified earlier you were not the 09:13:33

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1	2000."	1	A Are you -- are you just continuing on? 10:07:41
2	That was before the closing; right? 10:06:45	2	Q Yes, sir. 10:07:42
3	MR. BILLECK: Objection to form. 10:06:47	3	A The sentence beginning "I was never told"? 10:07:44
4	THE WITNESS: Yes. They hadn't closed by then. 10:06:50	4	Q No. No. I'm sorry. Next paragraph. I had 10:07:47
5	Q (By Mr. Kassof) And he said: "I met with Rob 10:06:52	5	John Magyard --
6	Roberts, Bob Scanlon and Graham Harcourt to get a feel for	6	A Executive -- 10:07:49
7	how the place was being operated. I specifically asked	7	Q -- and David Marshall with me on subsequent 10:07:52
8	about any problems with OSHA. Roberts and Scanlon told me	8	visits prior to closing. Do you see that?
9	that OSHA pretty much left them alone. There were two	9	A Okay. Yes. I see that. 10:07:54
10	Hispanics named Santiago and Sanchez as OSHA reps in the	10	Q And if you skip a little bit down, he writes, 10:07:55
11	area. I spent a lot of time walking around the chloride	11	quote, "We soon found the chloride plant was operating
12	plant that week and noted that either Kernira was lying or	12	totally out of control and maintenance at the facility was
13	Santiago and Sanchez must be blind."	13	haphazard at best."
14	Do you see that? 10:07:14	14	Do you see that? 10:08:05
15	MR. BILLECK: Objection to form. 10:07:15	15	MR. BILLECK: Objection to form. 10:08:06
16	THE WITNESS: Yes. I see that language. 10:07:17	16	THE WITNESS: Yes. 10:08:07
17	Q (By Mr. Kassof) And this is the -- 10:07:19	17	Q (By Mr. Kassof) Indicating from Mr. Montgomery 10:08:09
18	Mr. Montgomery indicating to Mr. Nickles what he noticed	18	to Mr. Nickles of something that he identified with the
19	before closing; true?	19	chloride plant prior to closing; true?
20	MR. BILLECK: Objection to form. 10:07:27	20	MR. BILLECK: Object to the form. 10:08:16
21	THE WITNESS: Yes. It certainly appears to say 10:07:29	21	THE WITNESS: That's what it says. 10:08:18
22	that.	22	Q (By Mr. Kassof) And Mr. Montgomery goes on to 10:08:2
23	Q (By Mr. Kassof) And then the next paragraph 10:07:31	23	talk about oxidation reactions that he was noting with
24	says -- he goes on to talk about other visits that he took	24	respect to the plant. Do you see that, sir?
25	prior to closing. Do you see the first sentence?	25	MR. BILLECK: Objection to form. 10:08:28
Page 359		Page 360	
1	THE WITNESS: Are you referring to the sentence 10:08:29	1	spent his time in March trying to determine how we could
2	that says: "We also determined that the oxidation	2	rectify the oxidizer problems as well as the vent system
3	reactions..."	3	design flaws. The complexity of the problem was enormous."
4	Q (By Mr. Kassof) Yes. 10:08:35	4	Do you see that? 10:09:21
5	A Yes. 10:08:35	5	A Yes. 10:09:22
6	Q And do you see, then, the two sentences later, 10:08:36	6	Q All identified as information that 10:09:23
7	he says, quote, "This was a dangerous condition to anyone	7	Mr. Montgomery found at the Savannah plant prior to
8	working in that area."	8	closing; correct?
9	Do you see that? 10:08:42	9	MR. BILLECK: Object to the form. 10:09:29
10	MR. BILLECK: Object to the form. 10:08:42	10	THE WITNESS: Yes. 10:09:29
11	THE WITNESS: Yes, I see that. 10:08:43	11	Q (By Mr. Kassof) He goes on to say: "We kept 10:09:3
12	Q (By Mr. Kassof) Another point that 10:08:44	12	making notes of things we found, and the list was getting
13	Mr. Montgomery noted to Mr. Nickles that Kern-McGee	13	longer. I advised John Talpos by phone in late March,
14	identified prior to closing; correct?	14	prior to closing, that there were a lot more problems than
15	MR. BILLECK: Object to the form. 10:08:51	15	we had seen in the original tour of Savannah."
16	THE WITNESS: That's what this says. Yes. 10:08:53	16	Do you see that, sir? 10:09:45
17	Q (By Mr. Kassof) Then he goes on to say: "I 10:08:54	17	A Yes. 10:09:45
18	told John Magyard that we had to rectify the problems with	18	MR. DONELSON: Object to the form. 10:09:46
19	the oxidizers or we could never make that plant work	19	Q (By Mr. Kassof) No reason to dispute that; 10:09:48
20	safely."	20	right?
21	Do you see that? 10:09:03	21	A No. That's what it says. 10:09:49
22	MR. BILLECK: Objection to form. 10:09:04	22	Q And who is John Talpos? 10:09:55
23	THE WITNESS: Yes. "The plant safely." But, 10:09:06	23	A At that time, he was a contractor or a 10:09:59
24	essentially, that's what it says.	24	consultant in a fairly high level within chemical to fill a
25	Q (By Mr. Kassof) And it goes on to say: "John 10:09:09	25	position that was vacant. So he was probably -- though he



Page 593	Page 594
<p>1 individuals as senior management?</p> <p>2 MR. BILLECK: Objection to form. 17:21:38</p> <p>3 THE WITNESS: I -- I don't know. I think they 17:21:42</p> <p>4 would assume that they were senior management, but I don't</p> <p>5 know who they considered senior management.</p> <p>6 Q (By Mr. Kassof) And Ms. Mikkelsen said that 17:21:48</p> <p>7 those are the folks -- or she checked with senior</p> <p>8 management first, Kerr-McGee senior management, before she</p>	<p>1 e-mail, that's an e-mail that Mary Mikkelsen sent to you;</p> <p>2 right?</p> <p>3 A Yes. 17:26:06</p> <p>4 Q No reason to believe you didn't get that; 17:26:09</p> <p>5 correct?</p> <p>6 A Correct. 17:26:11</p> <p>7 Q And in it, she's talking about how one of the 17:26:15</p> <p>8 points in the MSA was that there needed to be a provision</p>
<p>9 could go and send to Tronox's -- the lawyer that had been</p> <p>10 purportedly hired to represent Tronox's interests, she had</p> <p>11 to check with Kerr-McGee senior management before she could</p> <p>12 go and send a document that the own lawyers had asked for;</p> <p>13 correct?</p> <p>14 MR. BILLECK: Objection to form. 17:22:15</p> <p>15 THE WITNESS: Appears yes. It may have meant 17:22:29</p> <p>16 just her boss, but I don't know.</p> <p>17 Q (By Mr. Kassof) One more document, Mr. Addison. 17:24:34</p> <p>18 I've marked as Addison Exhibit 74 an e-mail exchange with</p> <p>19 the Bates numbers TRX-TAMM-118999 through '9000. And if</p> <p>20 you would look, sir, this is an e-mail string on which you</p> <p>21 are at the very bottom.</p> <p>22 A Okay. Okay. 17:25:52</p> <p>23 Q Have you read this e-mail string? 17:25:55</p> <p>24 A Yes. 17:25:55</p> <p>25 Q All right. And if you would look at the bottom 17:25:59</p>	<p>9 regarding the amount of cash that would be left in Tronox</p> <p>10 at the IPO date, which I understand to be \$40 million. Do</p> <p>11 you see that?</p> <p>12 A Yes. 17:26:27</p> <p>13 Q And then you went and forwarded that comment to 17:26:33</p> <p>14 Andrew Muratore; right?</p> <p>15 A Yes. 17:26:35</p> <p>16 Q Andrew Muratore was a lawyer at Covington &amp; 17:26:38</p> <p>17 Burling; correct?</p> <p>18 A Yes. 17:26:40</p> <p>19 Q And he then forwarded this string on even more, 17:26:43</p> <p>20 and then it came back to you. Do you see that? On October</p> <p>21 18th, 2005 at 9:59 a.m.?</p> <p>22 A Correct. 17:26:50</p> <p>23 Q And the e-mail that was sent to you said: "It 17:26:53</p> <p>24 was agreed this morning between Tronox and Kerr-McGee that</p> <p>25 \$55 million in cash would be left in the Tronox entities at</p>
Page 595	Page 596
<p>1 the IPO date."</p> <p>2 Do you see that? 17:27:00</p> <p>3 A Yes. 17:27:01</p> <p>4 Q And then 37 minutes later, Ms. Poos corrects 17:27:04</p> <p>5 the e-mail and says: "It was agreed this morning that 40</p> <p>6 million in cash would be left in the Tronox entities."</p> <p>7 Do you see that? 17:27:11</p> <p>8 A Yes. 17:27:11</p> <p>9 Q And then the e-mail gets forwarded -- 17:27:14</p> <p>10 Ms. Mikkelsen responds to the e-mail, quote, she giveth and</p> <p>11 she taketh away. Do you see that?</p> <p>12 A Yes. 17:27:24</p> <p>13 Q And that -- that comment that the \$15 million 17:27:28</p> <p>14 was lost in that 37-minute span was consistent with your</p> <p>15 recollection that Kerr-McGee Corporation was dictating the</p> <p>16 amount of money that would be left in Tronox at the time of</p> <p>17 the spin; correct?</p> <p>18 MR. BILLECK: Objection to form. 17:27:48</p> <p>19 THE WITNESS: Yes. 17:27:50</p> <p>20 MR. KASSOF: I'm done with this line of 17:27:51</p> <p>21 questioning, if you want to take a break for the evening.</p> <p>22 MR. WALTERS: Sounds good. 17:27:55</p> <p>23 THE VIDEOGRAPHER: Going off the record. The 17:27:57</p> <p>24 time is now 5:26 p.m.</p> <p>25 (Deposition concluded at 5:26 p.m. and witness excused) 17:28:03</p>	<p>1 ERRATA SHEET</p> <p>2 WITNESS: Roger Addison, Volume 2</p> <p>3 CASE STYLE: In Re: Tronox</p> <p>4 REPORTER: Lori A. Johnston, CSR, RPR, CLR</p> <p>5 PAGE LINE CORRECTION AND REASON</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 JURAT</p> <p>2 I, Roger Addison, do hereby state under oath that I</p> <p>3 have read the above and foregoing deposition in its</p> <p>4 entirety and that the same is a full, true, and correct</p> <p>5 transcription of my testimony so given at said time and</p> <p>6 place, except for the corrections noted.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Subscribed and sworn to before me, the undersigned</p> <p>13 Notary Public in and for the State of Oklahoma, on this,</p> <p>14 the _____ day of _____, 2010.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 NOTARY PUBLIC</p> <p>19</p> <p>20</p> <p>21 My Commission Expires: _____</p> <p>22 My Commission Number: _____</p> <p>23</p> <p>24</p> <p>25 Reported by: Lori A. Johnston, CSR, RPR, CLR</p>	<p>1 CERTIFICATE</p> <p>2 STATE OF OKLAHOMA )</p> <p>3 ) SS:</p> <p>4 COUNTY OF OKLAHOMA )</p> <p>5</p> <p>6 I, Lori A. Johnston, a Certified Shorthand Reporter</p> <p>7 for the State of Oklahoma, certify that Roger Addison was</p> <p>8 by me sworn to testify the truth; that the deposition was</p> <p>9 taken by me in stenotype and thereafter transcribed by</p> <p>10 computer and is a true and correct transcript of the</p> <p>11 testimony of the witness; that the deposition was taken by</p> <p>12 me on July 14, 2010, at 9:02 a.m., at 100 Park Avenue,</p> <p>13 Oklahoma City, Oklahoma; and that I am not an attorney for</p> <p>14 or relative of either party or otherwise interested in this</p> <p>15 action.</p> <p>16 Witness my hand and seal of office on this 15th day</p> <p>17 of July, 2010.</p> <p>18</p> <p>19</p> <p>20 Lori A. Johnston, CSR, RPR, CLR</p> <p>21 CSR # 01726 NCRA # 053265</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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TSG Reporting 877-702-9580

# EXHIBIT C

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE SOUTHERN DISTRICT OF OKLAHOMA  
3

IN RE: ) Chapter 11  
4 TRONOX INCORPORATED, et al., ) No. 09-10156  
Debtors. ) Jointly  
5 Administered )  
6 TRONOX INCORPORATED, TRONOX )  
WORLDWIDE LLC, f/k/a KERR-MCGEE )  
7 CHEMICAL WORLDWIDE LLC, and )  
TRONOX LLC, f/k/a KERR-MCGEE )  
8 CHEMICAL, LLC, )  
Plaintiffs, ) Adversary  
9 Proceeding )  
-vs- ) No. 09-01198 (ALG)  
10 ANADARKO PETROLEUM CORPORATION )  
and KERR-MCGEE CORPORATION, )  
11 Defendants. )  
12 THE UNITED STATES OF AMERICA, )  
Plaintiff-Intervenor, )  
13 -vs- )  
TRONOX INC., TRONOX WORLDWIDE )  
14 LLC, TRONOX LLC, KERR-MCGEE )  
CORPORATION, and ANADARKO )  
15 PETROLEUM CORPORATION, )  
Defendants. )  
16

17 CONFIDENTIAL - SUBJECT TO A PROTECTIVE ORDER  
18 VIDEOTAPED DEPOSITION OF ROGER ADDISON, VOLUME III  
19 TAKEN ON BEHALF OF TRONOX  
20 IN OKLAHOMA CITY, OKLAHOMA  
21 ON JULY 15, 2010  
22 TSG REPORTING, INC.  
NEW YORK, NEW YORK  
23 www.tsgreporting.com  
24 REPORTED BY: KIM GLOVER, CSR, RPR, RMR, CLR  
25 TSG JOB NO. 31427

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 600		Page 601	
1	APPEARANCES	1	FOR UNSECURED CREDITORS COMMITTEE:
2	FOR TRONOX:	2	ROSS G. SHANK
3	ANDREW A. KASSOF		Attorney at Law
4	DAVID H. DECELES	3	Kasowitz, Benson, Torres & Friedman
5	Attorneys at Law		1633 Broadway
6	Kirkland & Ellis LLP	4	New York, NY 10019
7	300 North LaSalle	5	FOR THE WITNESS:
8	Chicago, IL 60654	6	Kevin Donelson
9	FOR ANADARKO PETROLEUM CORPORATION:		Attorney at Law
10	JASON W. BILLECK	7	Fellers Snider Blankenship Bailey &
11	Attorney at Law	8	Tippens
12	Weil Gotshal & Manges LLP	9	1700 Chase Tower
13	700 Louisiana	10	100 North Broadway
14	Suite 1600	11	Oklahoma City, OK 73102
15	Houston, TX 77002	12	FOR THE EQUITY COMMITTEE:
16	JESSIE B. MISHKIN		DAVID A. CRICHLAW
17	Attorney at Law	13	Attorney at Law
18	Weil Gotshal & Manges LLP	14	Pillsbury Winthrop Shaw Pittman
19	767 Fifth Avenue	15	1540 Broadway
20	New York, New York 10153	16	New York, New York 10036
21	DUKE K. MCCALL, III	17	VIDEOGRAPHER:
22	Attorney at Law	18	ROBERT RUSCH
23	Biogeham McCutchen LLP	19	
24	2020 K Street NW	20	
25	Washington, DC 20006	21	
	JENNIFER EDWARDS	22	
	Senior Attorney	23	
	Anadarko Petroleum	24	
	1201 Lake Robbins Drive	25	
	The Woodlands, TX 77380		
	FOR UNITED STATES DEPARTMENT OF JUSTICE:		
	(Appearing by phone)		
	KATHERINE M. KANE		
	Trial Attorney		
	ENRD Mailroom, Room 2121		
	601 D Street, NW		
	Washington, D.C. 20004		
Page 602		Page 603	
1	EXHIBITS	1	Exhibit 87 e-mail from Neal Covage
2	For Tronox:		For Identification 764:2
3	Exhibit 75 presentation given to	2	
4	underwriters with a cover e-mail dated	3	Exhibit 88 e-mail from a Samuel Boxerman
5	September of 2005		For Identification 784:3
6	For Identification 613:4	4	
7	Exhibit 76 e-mail from Kareem Hamady	5	Exhibit 89 cover memo with an attached
8	For Identification 616:5	6	assignment agreement
9	Exhibit 77 e-mail exchange	7	For Identification 837:10
10	For Identification 632:8	8	
11	Exhibit 78 e-mail again from Mr. Hamady	9	
12	For Identification 632:9	10	
13	Exhibit 79 e-mail string 643:24	11	
14	For Identification	12	
15	Exhibit 80 presentation that you and Tom	13	
16	Adams gave to Anadarko on September 26,	14	
17	2007	15	
18	For Identification 655:20	16	
19	Exhibit 81 e-mail from you to Joe Flake and	17	
20	Pete Woodward in connection with the	18	
21	integrals	19	
22	For Identification 692:11	20	
23	Exhibit 82 e-mail that Tom Adams sent to	21	
24	you and to others on September 27th	22	
25	For Identification 697:20	23	
	Exhibit 83 e-mail string	24	
	For Identification 700:10	25	
	Exhibit 84 e-mail from Akin Gump and Mike		
	Chambers		
	For Identification 716:3		
	Exhibit 85 Lehman Brothers document		
	For Identification 743:14		
	Exhibit 86 e-mail		
	For Identification 751:10		

2 (Pages 600 to 603)

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 604			Page 605		
1	PROCEEDINGS	08:41:21	1	that presented it.	
2	THE VIDEOGRAPHER: The time	08:41:21	2	Q Well, but in April 2005 --	08:42:17
3	is now 8:39 a.m.		3	A Yes, they were currently	08:42:19
4	CONTINUED DIRECT EXAMINATION	08:41:25	4	employees.	
5	BY MR. KASSOF:	08:41:25	5	Q All right. So in April 2005	08:42:20
6	Q Morning, Mr. Addison.	08:41:26	6	Kerr-McGee employees presented a management	
7	A Yes.	08:41:26	7	presentation to potential buyers in the sale	
8	Q You understand you're still under	08:41:27	8	process of Kerr-McGee; correct?	
9	oath?		9	A Yes.	08:42:29
10	A Yes, sir.	08:41:30	10	Q These were third parties who	08:42:29
11	Q I have marked the -- or what I	08:41:31	11	would have an opportunity to conduct due	
12	have put before you is what's been previously		12	diligence in the arms length process?	
13	marked in this case as Adams Exhibit 37. There's		13	A Yes.	08:42:37
14	a tab one of Exhibit 37 Adams and it is the		14	Q And they were third parties who	08:42:40
15	April 2005 managing presentation. I think we		15	Kerr McGee gave a presentation in the hopes that	
16	were talking about this a little bit earlier.		16	they could generate interest in acquiring the	
17	Do you recall that?		17	chemical division; is that fair?	
18	A Yes.	08:41:50	18	A That was my understanding of the	08:42:52
19	Q All right. And this presentation	08:41:52	19	presentation.	
20	was presented to potential buyers in the sale		20	Q And you helped present the Legacy	08:42:58
21	process by Kerr-McGee management in April of		21	side -- Legacy site and legal portion of the	
22	2005?		22	presentation; is that right?	
23	A When you said Kerr McGee	08:42:07	23	A I know I did the legal portion.	08:43:07
24	management, it was prospective Tronox		24	The Legacy site I think was perhaps Pat Corbett,	
25	management, but yes, it was Kerr McGee employees		25	but I may have commented on it also.	
Page 606			Page 607		
1	Q All right. Fair enough. If you	08:43:13	1	sites by site, but -- with the -- what the	
2	look at page 3 of the April 2005 presentation in		2	slides are showing me, they talk about topic or	
3	the agenda, you will see that you're correct,		3	type of product or business.	
4	both you and Pat Corbett are listed in the		4	Q They also talk about sites, too.	08:45:05
5	Legacy sites and legal section of the		5	In addition -- you are correct about that and	
6	presentation.		6	they also talk about sites, too. If you look at	
7	A Yes.	08:43:28	7	slides 114 through 119, for example, you see at	
8	Q And if I can ask you to turn to	08:43:31	8	the top there is a reference "site location."	
9	the beginning of the Legacy sites and legal		9	A Yes, I see that.	08:45:22
10	presentation which starts at slide number 111.		10	Q All right. And that's the case	08:45:23
11	Slide 111 is the cover page to this portion of		11	for 114 through slide 119 of the presentation;	
12	the presentation; correct?		12	correct? With the last one just saying numerous	
13	A It appears to be, yes.	08:43:48	13	sites?	
14	Q All right. And if you look,	08:43:52	14	A That appears to be correct.	08:45:41
15	there are a total of ten slides presented to the		15	Q All right. And in particular, if	08:45:43
16	potential buyers in the sale process on Legacy		16	you look at slide 114 presented to potential	
17	issues; correct?		17	buyers in April of 2005 by management was a	
18	A I'm counting, but it appears to	08:44:20	18	slide on Thorium Manufacturing with respect to	
19	be, yes.		19	the west Chicago site; correct?	
20	Q And in the April 2005	08:44:22	20	A Are you speaking of slide 114?	08:46:04
21	presentation to potential buyers included in		21	You just said Thorium Manufacturing? This	
22	these slides were slides with details on		22	speaks of processing Thorium Manufacturing, yes.	
23	specific Legacy sites and liabilities; correct?		23	I'm not trying to be pretentious but I'm just	
24	A I'm trying to refresh my memory.	08:44:47	24	trying to clarify what you're asking.	
25	Yes. It appears -- well, I'm not sure they name		25	Q What I'm asking you is the -- to	08:46:21

3 (Pages 604 to 607)

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 680		Page 681	
1	environmental costs, the 200,000 figure rather	1	MR. BILLECK: Objection to
2	than the 100,000, yes.	2	form.
3	Q (By Mr. Kassof) Right. And what	3	THE WITNESS: That appears
4	you understood the MSA provided was that Tronox	4	to be what I'm saying.
5	would not be entitled to reimbursement of	5	Q (By Mr. Kassof) And, in fact,
6	amounts of certain environmental remediation	6	you said that having \$100,000 over the reserve
7	costs from Kerr-McGee unless the amount on a	7	amount, in your words, didn't appear to make
8	site by site basis exceeded the reserve amount	8	sense; correct?
9	that was specified in the document by more than	9	A That is how I read this, yes.
10	\$200,000; correct?	10	Q And not only was the \$100,000 not
11	MR. BILLECK: Object to the	11	eliminated from the final version of the MSA,
12	form.	12	but it became \$200,000; correct?
13	THE WITNESS: That's what	13	MR. BILLECK: Object to the
14	Section 2.5 of the Master Separation Agreement	14	form.
15	on page 10 appear to say, yes.	15	THE WITNESS: It certainly
16	Q (By Mr. Kassof) And how you	16	appears to be 200,000 in the final version, yes.
17	understood it; correct?	17	Q (By Mr. Kassof) And Kerr-McGee
18	A I would say yes.	18	mandated that \$200,000 amount; correct?
19	Q And what you were telling	19	A I would certainly think yes.
20	Mr. Crumpley back in your attachment --	20	Q Do you recall Mr. Crumpley
21	Mr. Muratori and then Mr. Crumpley, which you	21	agreeing with you or disagreeing with you on
22	forwarded to Mr. Crumpley on September 19th,	22	this section, whether he agreed with you that
23	2005, was that you were not at all certain that	23	there should not be any amount over the reserve
24	any amount over the reserve amount made any	24	amount before Tronox could access its
25	sense to ask; correct?	25	reimbursement from Kerr-McGee?
Page 682		Page 683	
1	A No. As I mentioned yesterday, I	1	Q And you certainly cannot identify
2	didn't even remember working with Mr. Crumpley	2	anything sitting here today that Mr. Crumpley or
3	until you showed me an e-mail. Obviously I	3	someone at his firm wanted, advocated for in the
4	have, but I don't recall any conversations with	4	MSA on behalf of Tronox that made its way into
5	him or discussions. Obviously I had them. I	5	the final version of the MSA. Is that fair?
6	just don't recall them.	6	A No. That's not.
7	Q Sitting here today, you can't	7	Q Can you identify something that
8	identify any conversations from Mr. Crumpley or	8	Mr. Crumpley or someone from his firm wanted
9	anyone at his firm in which Mr. Crumpley or	9	that made its way into the MSA sitting here
10	anyone at his firm advocated for better terms in	10	today?
11	the MSA for Tronox. Is that fair?	11	A I was told anecdotally sometime
12	A I remember dealing extensively	12	that Martin Stringer got the 100 million dollar
13	with Mr. Crumpley on a totally unrelated matter.	13	reimbursement provision in there. That was not
14	It had nothing to do with this. I don't -- he's	14	originally in there.
15	a thorough attorney. If I sent him comments, he	15	Q You agree with me, sir, that
16	probably commented back, but I don't remember	16	Martin Stringer could not have advocated for the
17	anything from James Crumpley.	17	\$100,000 reimbursement provision --
18	Q So the answer to my question is,	18	A 100 million dollars. I'm sorry.
19	correct, you don't -- sitting here today, you	19	Q All right. Martin Stringer could
20	can't identify anything that Mr. Crumpley or	20	not have advocated for the 100 million dollar
21	anyone in his firm sent to you advocating -- or	21	reimbursement provision before he was retained
22	anyone else advocating on behalf of Tronox	22	to work on the case; correct?
23	interest in the MSA. Is that fair?	23	MR. BILLECK: Object to the
24	A At that time, correct. That is	24	form.
25	correct.	25	THE WITNESS: I can't

22 (Pages 680 to 683)

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 684		Page 685	
1	imagine how he could or how he would even know	1	just telling you what I was told.
2	to have a comment or opinion, so yes.	2	Q (By Mr. Kassof) And if we look 10:43:11
3	Q (By Mr. Kassof) All right. And 10:42:03	3	at No. 12 of your comments, to Mr. Crumpley in
4	you are not saying that you have first hand	4	September of 2005, Exhibit 71 --
5	specific knowledge that Mr. Stringer came up	5	A All right. 10:43:23
6	with the 100 million dollar reimbursement	6	Q If you look, there is a section 10:43:25
7	provision; correct?	7	in the -- which made its way into the final MSA,
8	A No. I'm just telling you what I 10:42:19	8	2.5H dealing with a release and covenant not to
9	remember, what I was told after the fact by Tom	9	sue. You can look at the final version if you
10	Adams.	10	like.
11	Q And if Mr. Stringer was retained 10:42:26	11	A All right. 10:43:43
12	actually after the 100 million dollars was put	12	Q And if you look at the last 10:43:45
13	into the MSA drafts by Kerr-McGee, you would	13	sentence, one of the things that you said that
14	have no reason to dispute that; true?	14	there should be an exception or carve out for
15	A Could you please say that again? 10:42:43	15	claims by Tronox against the parent meaning
16	Q Sure. You would have -- if I 10:42:44	16	Kerr-McGee for claims arising out of allegations
17	said to you that Mr. Stringer was actually	17	of fraud; correct?
18	retained after the 100 million dollar provision	18	A Okay. Which comment again? I'm 10:44:03
19	was put into the MSA by Kerr-McGee, you would	19	not supposed to be marking on this document but
20	have no factual basis to dispute that. Is that	20	I'm on No. 10.
21	fair?	21	Q No. 12. 2.5H. If I can ask you 10:44:12
22	MR. BILLECK: Object to the 10:43:00	22	to look at your comments to Mr. Crumpley.
23	form.	23	A Okay. 10:44:15
24	THE WITNESS: Correct. 10:43:02	24	Q In paragraph 12 of your comments 10:44:16
25	Because I remember it was already in there. I'm	25	to Mr. Crumpley --
Page 686		Page 687	
1	A Yes. 10:44:18	1	section there is no carve out for claims arising
2	Q -- you identify for both 10:44:21	2	out of allegations of fraud; correct?
3	Mr. Muratori and then you forwarded it to	3	A Let me look at the whole thing. 10:46:20
4	Mr. Crumpley your view that there should be a	4	In subparagraph H, it does not 10:46:22
5	carve out in the release and covenant not to sue	5	appear that there is one.
6	provided to Kerr-McGee by Tronox for claims	6	Q That proposal that you made in 10:46:26
7	arising out of allegations of fraud against	7	September 2005 was rejected by Kerr-McGee;
8	Kerr-McGee; correct?	8	correct?
9	A I believe that's what it says, 10:45:03	9	MR. BILLECK: Object to the 10:46:32
10	yes.	10	form.
11	Q And because you thought that 10:45:06	11	THE WITNESS: I don't know 10:46:41
12	having a carve out for claims arising out of	12	that they rejected it, but that follows.
13	allegations of fraud would have been	13	Q (By Mr. Kassof) And it 10:46:44
14	appropriate; correct? That's why you	14	especially follows since Mr. Pilcher received
15	recommended it?	15	your comments also on September 19, 2005; true?
16	A Appropriate or inappropriate? 10:45:15	16	If you look at your e-mail.
17	Q Would have been appropriate, 10:45:18	17	A I'm trying to -- okay. He is on 10:47:01
18	appropriate to have a carve out for claims	18	the copy. Yes.
19	arising out of allegations of fraud.	19	Q This is another example where 10:47:05
20	A Based on this language and at the 10:45:33	20	Kerr-McGee, as you put it, was calling the shots
21	time, apparently yes.	21	on the MSA; right?
22	Q All right. If you can look at 10:45:36	22	A Did I use the phrase "calling the 10:47:19
23	Section 2.5H of the final executed MSA.	23	shots"?
24	A Uh-huh. 10:45:45	24	Q You sure did. 10:47:22
25	Q You will note that in this 10:45:47	25	A Okay. Then I'll say yes. 10:47:43

23 (Pages 684 to 687)



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<p>1 defenses for both the liability and amount of</p> <p>2 the remedy sought by the EPA against Tronox in</p> <p>3 connection with Manville?</p> <p>4 MR. KASSOF: Okay. I'll 13:50:40</p> <p>5 allow it.</p> <p>6 Q (By Mr. Billeck) And in fact, 13:50:42</p> <p>7 Tronox's counsel submitted to an arbitrator</p>	<p>1 connection with either the assignment assumption</p> <p>2 and indemnity agreement, the assignment</p> <p>3 agreement, and Project Focus?</p> <p>4 A I seem to recall Bill Lathan, 13:52:27</p> <p>5 inhouse attorney in the oil and gas division,</p> <p>6 somewhere immediately before or immediately soon</p> <p>7 after the IPO saying either they discovered some</p>
<p>8 Tronox's position that Tronox had strong and</p> <p>9 viable defenses both as to the liability and to</p> <p>10 the amount of remedy the EPA was seeking from</p> <p>11 Tronox in connection with the Manville site as</p> <p>12 late as the 4th quarter of 2006; correct?</p> <p>13 A Yes. 13:51:05</p> <p>14 Q And you would not have allowed 13:51:06</p> <p>15 counsel for Tronox to send such a statement to</p> <p>16 an arbitrator or mediator unless you believed it</p> <p>17 to be true and correct; correct?</p> <p>18 A That's correct. Yes. 13:51:17</p> <p>19 Q Okay. And this is -- this isn't 13:51:31</p> <p>20 a memory test, but I just -- I'm curious on</p> <p>21 there. As you sit here today, can you identify</p> <p>22 any specific oil and gas asset or liability or</p> <p>23 chemical division asset or liability that were</p> <p>24 transferred between and among the oil and gas</p> <p>25 E &amp; P division and the chemical division in 13:51:57</p>	<p>8 minor oil and gas property they should have</p> <p>9 gotten and didn't or that they -- some minor</p> <p>10 chemical related or Tronox related thing they</p> <p>11 somehow retained but certainly nothing</p> <p>12 significant.</p> <p>13 Q And that's the only thing you can 13:52:52</p> <p>14 remember as you sit here today?</p> <p>15 Like I said, it's not a memory 13:52:57</p> <p>16 test. I don't want you to guess or speculate.</p> <p>17 A I want to make sure I understand 13:53:01</p> <p>18 what you're saying also because there is a big</p> <p>19 schedule I think on that assignment assumption</p> <p>20 and indemnity agreement, but I think it was</p> <p>21 listing things that already had gone or were</p> <p>22 supposed to have gone.</p> <p>23 As I said, we discussed this 13:53:11</p> <p>24 yesterday. It was a clean-up document. Here's</p> <p>25 what we have done and anything else we may have</p>
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<p>1 missed. And then I think Bill Lathan came back</p> <p>2 and said, "I think we missed one." But I can't</p> <p>3 remember which way it went.</p> <p>4 There might be something else but 13:53:23</p> <p>5 I do not remember as of today.</p> <p>6 Q Okay. And you don't remember 13:53:26</p> <p>7 what the -- I think you said smaller immaterial</p> <p>8 assets or liabilities that may have been</p> <p>9 transferred that you recall what they were;</p> <p>10 correct?</p> <p>11 MR. KASSOF: Object to the 13:53:36</p> <p>12 form.</p> <p>13 THE WITNESS: No, I really 13:53:44</p> <p>14 don't.</p> <p>15 Q (By Mr. Billeck) Okay. Will you 13:53:45</p> <p>16 pull out Addison Exhibit 14, 15, and 16?</p> <p>17 A I think I had those. 13:54:19</p> <p>18 Q Ready? 13:54:20</p> <p>19 A Yeah. 13:54:20</p> <p>20 Q You recognize these to be what 13:54:23</p> <p>21 Tronox's counsel represented to you to be Lehman</p> <p>22 Brother documents from -- Addison 14, September</p> <p>23 7, 2000; Addison 15, January 1st, 2001; and</p> <p>24 Addison 16, April 16, 2001; correct?</p> <p>25 A Yes. 13:54:42</p>	<p>1 Q And you have testified that you 13:54:43</p> <p>2 had never seen these documents before your</p> <p>3 deposition yesterday -- or I'm sorry -- your</p> <p>4 deposition on Tuesday of this week; correct?</p> <p>5 A Are these the ones talking about 13:54:57</p> <p>6 the possible spin-off of chemical, right, or</p> <p>7 something? They called it Titan. Wasn't that</p> <p>8 it?</p> <p>9 Q In part. 13:55:07</p> <p>10 A Yes. 13:55:07</p> <p>11 Q Okay. 13:55:08</p> <p>12 A Never recalled -- I don't think I 13:55:10</p> <p>13 -- I'm certain I never saw these until I was</p> <p>14 showed them during this deposition.</p> <p>15 Q Okay. Terrific. And as a 13:55:16</p> <p>16 result, you have no personal knowledge, do you,</p> <p>17 about who or if anyone at Kerr-McGee ever</p> <p>18 received or reviewed these documents; correct?</p> <p>19 A No, I have no personal knowledge. 13:55:32</p> <p>20 Q You have no personal knowledge as 13:55:36</p> <p>21 to whether Lehman Brothers even presented these</p> <p>22 documents to Kerr-McGee; correct?</p> <p>23 A No, I have no idea. 13:55:43</p> <p>24 Q And you have no personal 13:55:44</p> <p>25 knowledge regarding whether Lehman Brothers was</p>

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<p>1 providing to Kerr-McGee the advice, 2 representations of statements in Exhibits 14, 3 15, or 16 to Kerr-McGee; correct? 4 A Could you please ask that again? 13:56:01 5 Q Sure. You have no personal 13:56:02 6 knowledge as to whether or not in the time 7 period of 2000, 2001, 2002, or 2003 Lehman</p>	<p>1 than that you saw them for the first time on 2 Tuesday of this week; correct? 3 A That's what I'm testifying, yes. 13:56:54 4 Q So any time Tronox's counsel 13:56:58 5 asked you in any of his questions based on these 6 documents that Lehman Brothers was recommending 7 or pointing out or highlighting or concluding</p>
<p>8 Brothers was actually providing the advice, 9 representations or statements in Exhibits 14, 10 15, or 16 to Kerr-McGee; correct? 11 MR. KASSOF: Object to the 13:56:20 12 form. 13 THE WITNESS: That's 13:56:21 14 correct. I don't know. 15 Q (By Mr. Billeck) We can sort of 13:56:27 16 short circuit this. You have no personal 17 knowledge about anything regarding exhibits -- 18 A I never saw them before today. 13:56:32 19 Q -- Addison 14, 15 and 16; 13:56:34 20 correct? 21 A Was it Tuesday? I have never 13:56:37 22 seen them before, that I know, that I recall. 23 Q As a result of the -- so you had 13:56:40 24 no -- you have no personal knowledge regarding 25 Adams 14, 15, or 16 in any way whatsoever other</p>	<p>8 certain things, you were merely reading what he 9 was pointing you to in these documents; correct? 10 MR. KASSOF: Object to the 13:57:16 11 form of the question. 12 THE WITNESS: Yeah. 13:57:22 13 Essentially, yes. He was pointing out certain 14 sections and reading them and asking me if 15 that's what I saw or what it said and I would 16 agree what it was. 17 Q (By Mr. Billeck) And you were 13:57:33 18 merely agreeing that something was contained or 19 not contained in the documents? That was all 20 you were agreeing to; correct? 21 MR. KASSOF: Object to the 13:57:38 22 form of the question. What testimony are you 23 talking about? 24 Q (By Mr. Billeck) I'm talking 13:57:40 25 about all testimony that you gave regarding the</p>
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<p>1 contents of Exhibits 14, 15 and 16. 2 MR. KASSOF: Object to the 13:57:48 3 form of the question. 4 Q (By Mr. Billeck) With respect to 13:57:51 5 this testimony, you were merely -- 6 A I can't remember every single 13:57:55 7 question he asked. So can I ask you to perhaps 8 rephrase yours in light of that? 9 Q You bet. The testimony you gave 13:58:14 10 regarding Exhibits 14, 15 and 16, was not based 11 on your personal knowledge but instead was based 12 on you reading selected excerpts that Tronox's 13 counsel pointed out to you for the first time on 14 Tuesday of this week; correct? 15 MR. KASSOF: Object to the 13:58:34 16 form. 17 THE WITNESS: Yeah. I'm not 13:58:37 18 trying to be difficult here. I mean, it was my 19 personal knowledge that I was, in fact, sitting 20 at this table looking at these documents. 21 Q (By Mr. Billeck) But outside of 13:58:47 22 that, you had no other personal knowledge? 23 A That is correct. 13:58:50 24 Q And when you say you were sitting 13:58:51 25 at this table and looking at these documents,</p>	<p>1 you are referring to sitting at this table here 2 at your deposition this week to look at these 3 documents? 4 A Yes. Today, yesterday or the day 13:59:02 5 before, yes. 6 Q Can you pull out Exhibit 18 -- 13:59:17 7 actually hang on one second. Exhibit 18. And I 8 would like to short circuit this, if possible. 9 If we could get 18 and 13 and 22. 10 A I believe I have those three 13:59:59 11 exhibits. You got yours? 12 MR. KASSOF: I'll be good. 14:00:06 13 Q (By Mr. Billeck) And again these 14:00:06 14 are documents that you testified yesterday that 15 you had never seen prior to your deposition on 16 Tuesday of this week; correct? 17 A I get confused. I testified 14:00:30 18 yesterday or Tuesday that I hadn't seen them 19 prior to Tuesday. 20 Q I'm sorry? 14:00:34 21 A I think I testified Tuesday I 14:00:36 22 hadn't seen them prior to Tuesday. 23 Q That's right. So the first time 14:00:39 24 you ever saw Addison Exhibits 13, 22 or 18 was 25 in your deposition in this lawsuit; correct?</p>

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1	A	Certainly as to 22 and 13. Let	14:00:55	1	Q (By Mr. Billeck) I just want to	14:02:39	
2		me doublecheck 18. I don't remember seeing		2	be sure. Your testimony -- when I referred to		
3		this. Did we discuss Addison 18 in here?		3	"your testimony," your testimony in this		
4	Q	We did.	14:01:12	4	deposition regarding these documents was not		
5	A	We did?	14:01:27	5	based on your personal knowledge but it was		
6	Q	And my questions are similar to	14:01:29	6	instead based on you reading the selected		
7		the questions that we did with the Lehman		7	excerpts of the Exhibits Addison 13, 22, and 18		
8		parties.		8	that Tronox's counsel pointed out to you?		
9		You had seen these documents that	14:01:36	9	MR. KASSOF: Object to the	14:03:04	
10		were Exhibits 14, 15 and 16?		10	form.		
11	A	Uh-huh.	14:01:39	11	THE WITNESS: Yes. I	14:03:08	
12	Q	With respect to these Exhibits	14:01:40	12	testified and I still believe I had never seen		
13		13, 22 and 18, you had no personal knowledge		13	these documents before.		
14		regarding these documents or their contents		14	Q (By Mr. Billeck) And you have no	14:03:19	
15		prior to your testimony in this lawsuit this		15	personal knowledge of whether or not Exhibits		
16		week; correct?		16	18, 33 or 22 were ever provided to Kerr-McGee;		
17	A	That is correct.	14:02:02	17	correct?		
18	Q	And your testimony in this	14:02:04	18	A Okay. Hang on a second. 18?	14:03:33	
19		lawsuit was based not on personal knowledge but		19	Q 18, 13 and 22.	14:03:37	
20		instead on reading the excerpted portions of the		20	A I thought you said 33.	14:03:39	
21		documents that Tronox's counsel pointed you to;		21	Q I may have.	14:03:39	
22		correct?		22	You have no personal knowledge of	14:03:41	
23		MR. KASSOF: Object to the	14:02:16	23	whether 18, 13 and 22 were ever provided to		
24		form.		24	Kerr-McGee; correct?		
25		THE WITNESS: I think, yes.	14:02:38	25	A They all say drafts. Maybe they	14:03:49	

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1		never got here. I don't know one way the other.		1	A Even though I was heavily	14:05:34	
2	Q	You have no personal knowledge	14:03:51	2	involved in the arbitration claim, which		
3		whether or not anybody at Kerr-McGee ever		3	relates, I don't recall ever having seen this		
4		actually reviewed documents 18 -- Addison 18, 13		4	before this deposition.		
5		and 22; correct?		5	Q And you have no personal	14:05:40	
6	A	Yeah. I guess I do not.	14:04:05	6	knowledge of whether B. J. Montgomery actually		
7	Q	And you have -- as you mentioned,	14:04:06	7	drafted this document or not?		
8		each of these say draft. You have no personal		8	A No, I don't know that he did or	14:05:48	
9		knowledge as to whether or not the statements		9	not.		
10		contained in Addison 18, 13 or 22 were final		10	Q You have no personal knowledge as	14:05:50	
11		work products that reached ultimate conclusions		11	to whether or not these were the opinions or		
12		or were working drafts; correct?		12	conclusions or beliefs held by B. J.		
13	A	I guess that's correct.	14:04:27	13	Montgomery; correct?		
14	Q	Okay. Let's look at Exhibit 30.	14:05:00	14	A I don't think he ever confirmed	14:06:09	
15		Do you have it?	14:05:02	15	to it personally and I don't recall ever		
16	A	Yes, I do.	14:05:02	16	speaking with him about this.		
17	Q	Do you recognize this to be an	14:05:05	17	Q So you have no personal knowledge	14:06:16	
18		unsigned -- it appears to be a letter of some		18	whether or not he held the opinions and		
19		sort by B. J. Montgomery.		19	conclusions and beliefs; correct? Personal		
20	A	This appears to be an e-mail or	14:05:17	20	knowledge.		
21		something from -- to Peter Nichols from B. J.		21	A I sat through a big arbitration	14:06:27	
22		Montgomery.		22	proceeding. I'm trying to think if some of this		
23	Q	And prior to your deposition in	14:05:24	23	might have been introduced then or something. I		
24		this lawsuit this week, you had never seen		24	just don't remember. I guess that wouldn't be		
25		Addison Exhibit 30; correct?		25	personal knowledge anyway if something like this		

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1	-- these allegations had been mentioned in the	1	It's possible -- or you do not 14:07:50
2	arbitration proceeding. So I don't remember	2	know whether Mr. Crumpley, Mr. Stringer or their
3	this. I really don't.	3	associates at the McKinney Stringer firm
4	Q So you do not have any personal 14:06:43	4	provided advice or counsel to Tronox in
5	knowledge as to whether B. J. Montgomery holds	5	connection with the MSA or the dual track
6	the opinions or conclusions contained in Addison	6	process or the spin-off that was not provided to
7	Exhibit 30, correct?	7	you or to which you were not made aware of.
8	A I'm going to say yes. 14:06:58	8	correct, meaning they could have provided -- let
9	Q And you have no personal 14:06:59	9	me say it again.
10	knowledge of whether or not this document was	10	McKinney Stringer and its lawyers 14:08:26
11	actually ever sent to Peter Nichols; correct?	11	could have provided advice to Tom Adams or Mary
12	A I don't remember Peter Nichols 14:07:16	12	Mikkelson and not have copied you on it;
13	ever telling me he got anything from B. J.	13	correct?
14	Montgomery so, yeah, I don't know.	14	A That's correct. 14:08:43
15	Q I have very few left and I'll try 14:07:25	15	Q You also were asked some 14:08:46
16	to do it quickly.	16	questions about a DEO report regarding Manville.
17	Earlier you testified that you 14:07:29	17	A Yes. 14:08:52
18	did not know whether McKinney Stringer or its	18	Q You never read that report; 14:08:53
19	lawyers provided certain types of advice to	19	correct?
20	Tronox in connection with the separation	20	A I don't how they compare. I know 14:08:54
21	agreement or what advice they provided; correct?	21	a gas report.
22	MR. KASSOF: Object to the 14:07:41	22	Q So you have no idea what the 14:08:56
23	form.	23	conclusions were or were not in that report;
24	Q (By Mr. Billeck) Let me state it 14:07:42	24	correct?
25	again.	25	A No. We asked Terry Reid for help 14:09:03
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1	and I don't know if he was able to help.	1	clean-up document would obviously relate back to
2	Q You also talked about the fact 14:09:08	2	the same closing date or be effective on that
3	that the assignment assumption and indemnity	3	date. That was the goal of it to make it
4	agreement and the assignment agreement were	4	effective as of that date.
5	drafted in 2005; correct?	5	MR. BILLECK: Can we take 14:10:37
6	A I feel extremely comfortable the 14:09:20	6	five minutes?
7	first time I saw them was in April or May of	7	MR. KASSOF: Of course. 14:10:39
8	2005.	8	THE VIDEOGRAPHER: Going off 14:10:40
9	Q Fair point. The first time you 14:09:26	9	the record, the time is now 2:09 p.m.
10	saw them was in May or April of 2005; correct?	10	(Short break) 14:25:01
11	A At this deposition somebody told 14:09:32	11	THE VIDEOGRAPHER: Going 14:25:02
12	me they had seen an earlier -- and I won't even	12	back on the record, the time is now 2:23 p.m.
13	say that. The earliest I saw them was April or	13	Q (By Mr. Billeck) Mr. Addison, as 14:25:09
14	May of 2005.	14	we said each time after a break, you realize
15	Q Now, you know when they were 14:09:42	15	you're still under oath?
16	signed, they were dated effective December 31,	16	A Yes. 14:25:13
17	2002; correct?	17	Q You remember the April 2005 14:25:15
18	A Yes, year end 2002. 14:09:54	18	management presentation that was marked as
19	Q Did you view that as improper or 14:09:59	19	Exhibit --
20	inappropriate to date the documents effective	20	MR. KASSOF: Adams 37? 14:25:30
21	December 31, 2002 in connection with your	21	THE WITNESS: By 14:25:31
22	drafting or preparation of these documents?	22	happenstance it's in front of me.
23	A No. As I told you, I understood 14:10:14	23	Q (By Mr. Billeck) Let me see. 14:25:35
24	it to be a clean-up document for a transaction	24	Exactly. Perfect. In that presentation you
25	that was closed on December 31st, 2002. So a	25	remember Tronox's counsel showed you a couple of

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<p>1 because I remember it very well.</p> <p>2 When I was asked to visit with 15:19:03</p> <p>3 your law firm on behalf of Tronox, on account of</p> <p>4 this litigation, I was concerned I would be</p> <p>5 asked questions prior to the IPO date of</p> <p>6 November 28th, 2005 and I was concerned as I</p> <p>7 have been here as my counsel made an opening</p> <p>8 statement about attorney client privilege</p> <p>9 matters and confidentiality. So I wanted to see</p> <p>10 what Mr. Owens, what counsel for the other side</p> <p>11 thought of privilege issues and also wanted to</p> <p>12 alert him that I had been -- they wanted to</p> <p>13 question me.</p> <p>14 And his response to me, "See if 15:19:45</p> <p>15 they will meet with us jointly in the same room</p> <p>16 at the same time so I only have to discuss this</p> <p>17 once" which I relayed to Michael Foster, at</p> <p>18 Tronox, the then general counsel, still general</p> <p>19 counsel, and I believe he called back and said,</p> <p>20 "I have checked with Kirkland -- Is that your</p> <p>21 firm?"</p> <p>22 Q Yeah. 15:20:06</p> <p>23 A -- and that they would rather 15:20:06</p> <p>24 speak with you alone without Kerr-McGee Anadarko</p> <p>25 but we'll limit the conversation to matters</p>	<p>1 happening after the IPO." On that basis, I said</p> <p>2 I would attend the meeting. I also relayed that</p> <p>3 premeeting conversation to Mr. Owens and said</p> <p>4 after the meeting I would call him and let him</p> <p>5 know generally what occurred.</p> <p>6 Q Did you tell Mr. Owens what 15:20:33</p> <p>7 questions or things you talked about with Mr.</p> <p>8 Zott and Mr. Zeiger?</p> <p>9 A Can I finish my first answer 15:20:38</p> <p>10 first?</p> <p>11 Q I'm sorry. No. I thought you 15:20:40</p> <p>12 were done.</p> <p>13 A No. I proceeded to meet with 15:20:45</p> <p>14 Mr. Zott and Mr. Zeiger, I believe Lisa, the</p> <p>15 paralegal, and Mike Foster were also there on</p> <p>16 behalf of Tronox. We had our approximately four</p> <p>17 hour discussion with them on various matters.</p> <p>18 They said, "Fine. Let's get ready to go." And</p> <p>19 I remember -- Oh, I told David Owens I would</p> <p>20 fill him in on the conversation. I wanted to be</p> <p>21 open, honest, not taking sides so I knocked on</p> <p>22 the door to tell Mr. Zeiger did he mind if I</p> <p>23 would give -- if I would relay our discussions</p> <p>24 of that day with Mr. Owens and he said -- he</p> <p>25 thought a moment and he said, "No, go ahead",</p>
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<p>1 like it was no big deal.</p> <p>2 Q Okay. 15:21:26</p> <p>3 A I decided I wouldn't call Dave 15:21:28</p> <p>4 Owens and I never spoke with him since. I never</p> <p>5 had another discussion except with these two</p> <p>6 here six weeks ago.</p> <p>7 Q Fair enough. Give me a couple 15:21:40</p> <p>8 minutes to see if I'm all done.</p> <p>9 THE VIDEOGRAPHER: Going off 15:21:43</p> <p>10 the record. The time is now 3:19.</p> <p>11 (Short break) 15:26:25</p> <p>12 THE VIDEOGRAPHER: Going 15:26:26</p> <p>13 back on the record, the time is now 3:25 PM.</p> <p>14 Q (By Mr. Kassof) Mr. Addison, do 15:26:33</p> <p>15 you know who the financial adviser was for the</p> <p>16 HS Resources deal on behalf of Kerr-McGee?</p> <p>17 A Oil and gas deal, summer of 2001. 15:27:05</p> <p>18 Wilson Baxter was the law firm. We switched</p> <p>19 from Credit Suisse to Lelman Brothers somewhere</p> <p>20 in 2000 or 2001. I don't know if there was an</p> <p>21 overlap or not. I don't remember.</p> <p>22 Q Either Lehman Brothers or Credit 15:27:16</p> <p>23 Suisse would be to the best of your</p> <p>24 recollection?</p> <p>25 A Yes. 15:27:21</p>	<p>1 MR. KASSOF: I have no 15:27:21</p> <p>2 further questions. Thank you very much, sir.</p> <p>3 MR. BILLECK: No further 15:27:24</p> <p>4 questions.</p> <p>5 MR. DONELSON: On behalf of 15:27:26</p> <p>6 Mr. Addison, he is going to read and sign.</p> <p>7 However he -- to the extent he has any rights</p> <p>8 which I don't know under any of the protective</p> <p>9 orders that have been entered in this case, he</p> <p>10 would request that his deposition be designated</p> <p>11 as confidential and he would similarly make the</p> <p>12 request to the extent he has no standing, that</p> <p>13 the parties designate his deposition as</p> <p>14 confidential.</p> <p>15 MR. KASSOF: Okay. Thank 15:27:52</p> <p>16 you.</p> <p>17 THE VIDEOGRAPHER: Going off 15:27:53</p> <p>18 the record, this concludes the deposition of</p> <p>19 Roger Addison. The time is now 3:26 p.m.</p> <p>20 15:28:00</p> <p>21 15:28:00</p> <p>22 15:28:00</p> <p>23 15:28:00</p> <p>24 15:28:00</p> <p>25 15:28:00</p>

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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 848				Page 849			
1	ERRATA SHEET			1	JURAT		
2	WITNESS: Roger Addison, Volume 3			2	I, Roger Addison, do hereby state under oath that I		
3	CASE STYLE: In Re: Tronox			3	have read the above and foregoing deposition in its		
4	REPORTER: KIM GLOVER, CSR, RPR, RMR, CLR			4	entirety and that the same is a full, true, and correct		
5	PAGE	LINE	CORRECTION AND REASON	5	transcription of my testimony so given at said time and		
6	---	---	---	6	place, except for the corrections noted.		
7	---	---	---	7			
8	---	---	---	8			
9	---	---	---	9			
10	---	---	---	10			
11	---	---	---	11			
12	---	---	---	12	Subscribed and sworn to before me, the undersigned		
13	---	---	---	13	Notary Public in and for the State of Oklahoma, on this,		
14	---	---	---	14	the ____ day of _____, 2010.		
15	---	---	---	15			
16	---	---	---	16			
17	---	---	---	17			
18	---	---	---	18	NOTARY PUBLIC		
19	---	---	---	19			
20	---	---	---	20			
21	---	---	---	21			
22	---	---	---	22	My Commission Expires: _____		
23	---	---	---	23	My Commission Number: _____		
24	---	---	---	24			
25	---	---	---	25			

Page 850			
1	Reported by: KIM GLOVER, CSR, RPR, RMR, CLR		
2	C E R T I F I C A T E		
3	STATE OF OKLAHOMA )		
4	) SS:		
5	COUNTY OF OKLAHOMA )		
6			
7	I, KIM GLOVER, a Certified Shorthand Reporter		
8	for the State of Oklahoma, certify that Roger Addison was		
9	by me sworn to testify the truth; that the deposition was		
10	taken by me in stenotype and thereafter transcribed by		
11	computer and is a true and correct transcript of the		
12	testimony of the witness; that the deposition was taken by		
13	me on July 14, 2010, at 100 Park Avenue,		
14	Oklahoma City, Oklahoma; and that I am not an attorney for		
15	or relative of either party or otherwise interested in this		
16	action.		
17	Witness my hand and seal of office on this 16th day		
18	of July, 2010.		
19			
20			
21	KIM GLOVER, CSR, RPR, RMR, CLR		
22			
23			
24			
25			

64 (Pages 848 to 850)

TSG Reporting 877-702-9580

# **EXHIBIT D**

**In the Matter of Arbitration No. 3439**

**KERR-McGEE CHEMICAL WORLDWIDE LLC**  
as a successor to Kerr-McGee Corporation  
and KERR-McGEE CHEMICAL LLC  
(hereafter jointly referred to as "Kerr-McGee"),

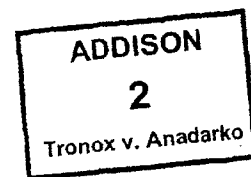
**Claimants,**

**v.**

**KEMIRA PIGMENTS OY and KEMIRA OYJ,**

**Respondents.**

**WITNESS STATEMENT OF W.P. "PETE" WOODWARD**





**A. Personal Background.**

My name is W.P. "Pete" Woodward. I served as President of Kerr-McGee Chemical LLC and Kerr-McGee Chemical Worldwide LLC, and Senior Vice President of their parent company, Kerr-McGee Corporation, from 1997 through September 17, 2004, when I took voluntary retirement. Kerr-McGee Corporation is a worldwide energy and inorganic chemical company with its headquarters in Oklahoma City, Oklahoma, United States. Kerr-McGee Corporation's total annual sales, including its oil and gas operations, exceed \$4 billion, and its total assets are more than \$14 billion. Kerr-McGee's chemicals businesses have annual sales of approximately \$1.3 billion.

As President of Kerr-McGee Chemical LLC and Kerr-McGee Chemical Worldwide LLC I was in charge of Kerr-McGee's worldwide chemical operations, including all of its titanium dioxide facilities. I was the senior-most executive directly involved in Kerr-McGee's purchase from Kemira of the Savannah, Georgia titanium dioxide facilities that are at issue in this arbitration. I was also the senior-most executive directly involved in Kerr-McGee's purchase of three other titanium dioxide facilities--the Uerdingen, Germany and Antwerp, Belgium facilities purchased from Bayer in 1998, and the Botlek, Netherlands facility purchased from Kemira in 2000.

I am 55 years old. I received a Bachelor of Science degree in chemistry from the University of Central Oklahoma in 1972, and went to work for Kerr-McGee that year.

My first jobs at the company were in its agricultural chemicals division, and included technical, sales and operating responsibilities. My work for that division culminated in my service as a plant manager. I then moved to the Company's industrial products division, holding a variety of positions in the Soda Products Division, and then the Electrolytic Products Group.

In 1990, I became Vice President of Quality for Kerr-McGee's chemical businesses, and was promoted to the Business Manager of the Company's titanium dioxide pigments business in 1993. Titanium dioxide is the world's preferred opacifier and whitening agent for paint, coatings, plastics, paper and numerous other consumer products.

At the time I became Business Manager, Kerr-McGee's pigments businesses included two titanium dioxide production facilities, one a wholly owned facility in Hamilton, Mississippi, and the other the Tiwest joint venture in western Australia. Kerr-McGee also owned a synthetic rutile facility in Mobile, Alabama, which produced feedstocks for the production of titanium dioxide.

In 1996 I was promoted to Vice President of Sales and Marketing for the pigments division. In 1997 I was appointed to my positions as President of worldwide chemical operations and Senior Vice President of Kerr-McGee Corporation.

As President of worldwide chemical operations and Senior Vice President of Kerr-McGee Corporation I was in charge of all of Kerr-McGee's chemical businesses including the titanium dioxide division, which currently includes production facilities in Hamilton, Mississippi; Savannah, Georgia; Uerdingen, Germany; Botlek, Netherlands; and the Tiwest joint venture plant outside of Perth in western Australia. In addition, as part of the Tiwest joint venture in Australia, Kerr-McGee has a 50% interest in a 500,000 tonne per year mineral sands mine, and a 200,000 tonne per year synthetic rutile plant. The Mobile and Antwerp facilities previously mentioned have been closed.

Kerr-McGee is currently the third largest titanium dioxide producer in the world. Kerr-McGee supplies titanium dioxide to customers in over 100 countries. As President of Kerr-

McGee Chemical LLC and Kerr-McGee Chemical Worldwide LLC, I was also in charge of Kerr-McGee's electrolytic and specialty chemicals businesses.

**B. The Two Kinds of Titanium Dioxide Plants.**

The Savannah facility consists of two different plants, one that makes titanium dioxide using the sulfate process, and the other using the chloride process. Although the two plants shared some common facilities (such as parts of the water supply system), they use different inputs and processes, and most of the physical equipment is completely separate. Titanium dioxide produced by the chloride method has optical properties generally preferred by the market place. About 60 percent of titanium dioxide produced around the world is produced through the chloride method.

The Savannah chloride plant is significantly newer than the sulfate plant. The lion's share of the value of the Savannah facilities is on the chloride side; I will give more detail about that as I proceed.

**C. Contacts With Kemira Regarding The Possible Purchase Of The Savannah Facility.**

Kerr-McGee's first contact with Kemira regarding that company's possible interest in selling some or all of its titanium dioxide production facilities took place in March 1997. At that time, Kemira owned three facilities, one in Pori, Finland, one in Botlek, Netherlands, and the Savannah, Georgia facility. Joe Flake, then the Manager of Analysis and Evaluation for Kerr-McGee's chemicals business, David Ezell, the pigments business director, and I met briefly in Atlanta with Risto Keranen, President of Kemira Pigments Oy, and Risto Ojala, President of Kemira's Savannah facility, to discuss whether Kemira might be interested in selling the Savannah facility. Soon after that meeting, Mr. Keranen called and indicated that Kemira Pigments was not interested in a sale at that time.

However, in June 1999, newspaper reports quoted Heimo Karinen, the chief executive of the parent company, Kemira Oyj, to the effect that he foresaw changes in Kemira's corporate strategy as a result of his impending retirement and replacement by the head of Kemira's agricultural chemicals business. He stated that Kemira intended to focus on "core businesses."

Mr. Flake and I interpreted this public disclosure to suggest that Kemira might be shifting its strategy and that it might now be interested in selling some or all of its titanium dioxide facilities. I therefore arranged a meeting with the incoming President of Kemira Oyj, Tauno Pihlava, to coincide with my late September 1999 trip to our European facilities.

I had a preliminary meeting with Mr. Pihlava and Kemira Executive Vice President Essa Tirkkonen in Helsinki on or about September 27, 1999. Mr. Pihlava indicated that Kemira was indeed considering the possibility of selling some or all of its titanium dioxide facilities. He agreed to provide some financial information regarding those businesses, and we agreed to meet again after Kerr-McGee had had the chance to review this data.

**D. The Limitations Imposed By Kemira On The Due Diligence Process.**

Prior to that second meeting, Kerr-McGee and Kemira entered into a "Secrecy Agreement" that was drafted by Kemira. (Exh. 465). The Agreement stated that the companies would be meeting to discuss, among other possibilities, the sale of production units or businesses. (Paragraph 1). The Agreement provided that "neither Party nor its advisers shall, regarding the transaction, contact or communicate with any officers, employees, consultants, advisers, customers or suppliers [of the other party] without the prior written consent of the other Party." (Paragraph 3).

As I will be discussing in this Statement, Kemira continued to insist on these kinds of restriction on contacts with Kemira personnel throughout the transaction regarding the

Savannah facility, up to and including the April 6, 2000 closing. While such restrictions are not unusual in the business world, they do inhibit a purchaser's ability to develop its own insights into the business that is being purchased. These kinds of restrictions force the buyer to rely on the accuracy of the sellers' information and therefore require that strong contractual warranties, representations and indemnifications be included in the purchase agreement.

The second meeting between Kerr-McGee and Kemira took place in Finland on or about October 8, 1999. Attending for Kerr-McGee were Mr. Flake, Assistant General Counsel Roger Addison, and I. Attending for Kemira were Mr. Pihlava and Mr. Tirkkonen, and perhaps one or two others as well. At the October 8, 1999 meeting, Kemira indicated an interest in selling all three of its titanium dioxide plants.

In late October and into November 1999, Kemira and Kerr-McGee corresponded regarding the possible sales transaction, and I provided Kerr-McGee's preliminary valuation of the facilities in question. (Exh. 466). In that letter, I sought Kemira's agreement to a 60-day period during which Kerr-McGee would be the exclusive party bargaining with Kemira.

However, through its investment bankers, Salomon Smith Barney, Kemira in a letter to me dated November 15, 1999, declined Kerr-McGee's request. Salomon Smith Barney stated that Kemira instead had decided to engage in an "auction" process in which several unnamed potential buyers other than Kerr-McGee would participate. (Exh. 7). Kemira also indicated it had decided not to sell the Pori facility.

Solomon Smith Barney's subsequent November 22, 1999 letter to me stated that it would provide a draft purchase agreement on November 26, 1999, and that Kerr-McGee's binding offer, indicating the purchase price as well as any necessary changes to this draft

agreement, would be due by January 10, 2000 (a deadline later extended to January 26, 2000). (Exh. 460; Exh. 470).

In both the November 15, 1999 and November 22, 1999 letters, Salomon Smith Barney, acting on behalf of Kemira, set forth the restrictions that would be placed on Kerr-McGee's access to the Savannah Plant, plant personnel, and relevant documentation during the "due diligence" process leading up to the signing of a binding contract. In the November 15, 1999 letter, Salomon Smith Barney instructed: "Please do not contact Kemira management directly under [any] circumstance for matters relating to this process." Salomon Smith Barney indicated that it would instead arrange for a Plant visit, and would place certain written materials into a "data room" that Kerr-McGee would be able to review.

Both then and later, Kemira justified these restrictions on the ground that Kerr-McGee could not be given any advantages over the other bidders: thus, Kerr-McGee's access to "senior management and data room would be on equal basis vis-a vis the other parties selected to proceed."

The limitations on Kerr-McGee's due diligence were further spelled out in Salomon Smith Barney's November 22, 1999 letter to me. The letter stated: "You are reminded not to contact (with regard to this transaction) (i) the Seller and its personnel; (ii) Salomon Smith Barney (other than individuals listed in the Contact Sheet attached herewith); or (iii) any other interested third parties (e.g. without limitation, suppliers or customer). All communications or enquiries relating to the transaction involving the Companies should be directed only to the Salomon Smith Barney employees listed in the Contact Sheet."

The November 22, 1999 letter also provided all due diligence would have to be completed prior to Kerr-McGee's submission of its offer: "Your obligation to consummate

the transaction must not be contingent upon obtaining financing, additional corporate approvals or additional due diligence. You must have completed all due diligence prior to the submission of your offer." (Paragraph vi). As noted above, this offer was due on January 26, 2000.

This kind of investment banker-driven and controlled process for the sale of a facility or business is not unique to this transaction. In fact, Bayer had used a similar process in connection with its January 1998 sale to Kerr-McGee of the Uerdingen and Antwerp facilities. But when a seller imposes these kinds of heavy restrictions on the prospective buyer, it becomes essential that the buyer obtain strong contractual representations as a substitute for conducting its own extensive due diligence.

Kemira and Salomon Smith Barney enforced the restrictions they had imposed on Kerr-McGee. At one point I placed a telephone call to Kemira Oyj Chief Executive Officer Tauno Pihlava in an effort to discuss an aspect of the proposed transaction. We typically like to deal with the company principals in a deal, in that they are typically "subject matter experts"; investment bankers typically are not. Unfortunately, he referred me back to the bankers.

Of course, Kerr-McGee did not intend to rely entirely on Kemira's contractual representations. On November 17, 1999, I sent Solomon Smith Barney a seven-page list of materials Kerr-McGee wanted to see in the data room. (Exh. 467). Among the materials Kerr-McGee requested were the following:

- "Provide additional detail for all pending and threatened litigation, claims or assessments;
- Asbestos surveys (1994 through present);
- Detail of any OSHA (or other agency) citations, reports or notices of violation."

These specific requests all relate to issues that have now given rise to several of Kerr-McGee's claims asserted against Kemira in this arbitration. As I will describe further in this statement, the responses Kemira provided to these requests, and to Kerr-McGee's follow-up inquiries, were false and misleading.

Salomon Smith Barney scheduled for December 9-11, 1999, a review of the documents in the data room, and a one-day visit to the Savannah Plant on December 9, 1999. (Exh. 461). As reflected in the written schedule prepared by Salomon Smith Barney, the morning of the December 9, 1999 Savannah visit was limited to an introduction and safety video, followed by an oral management presentation and lunch. The actual Plant visit did not begin until 1:30 in the afternoon, and ended that same day.

Salomon Smith Barney also instructed that "participants will be permitted to interview Kemira personnel only if scheduled in advance." (Exh. 464).

The review of the data room, and Plant visit, proceeded as scheduled. I am aware that Kemira has suggested that Kerr-McGee did, or should have, discovered the multitude of Plant defects that underlie this arbitration during that visit. This is not true. The Savannah facility is very large, covering approximately 1,600 acres (650 hectares) on an approximately three-quarter-mile (1.2 kilometer) stretch of the southern bank of the Savannah River in Savannah, Georgia. The facility includes four large, primary operational buildings, and several dozen support buildings and structures. The size of the Plant, and limited time for a visit, made a detailed physical inspection impossible. I know this because I personally participated in the tour.

After Kerr-McGee took over the Plant, I was shown an internal memorandum by Kemira personnel that carefully outlines, step by step, the route that Kemira personnel were instructed to take when escorting Kerr-McGee personnel on the tour. (Exh. 463).



There is no way that anyone could gain more than a superficial impression of the facility during a brief, guided tour. This is especially true given the matters on which Kerr-McGee was concentrating its efforts during the Plant visit.

Kerr-McGee was particularly concerned about the environmental legacies it would be inheriting were it to purchase the Plant. The Plant utilizes large settling ponds to handle waste material, which were nearly full and presented significant potential environmental concerns. In addition, an undeveloped part of the Plant property contained a former municipal landfill, which had been the subject of extensive government investigations. These and other environmental issues were among the focal points of attention during the visit.

We were also keenly interested during the Plant visit in assessing the technology being used by the Savannah Plant. As I have mentioned, there are two different plants at Savannah, the older sulfate plant and the newer chloride plant. While we anticipated a profitable operation of the sulfate plant, the real "value" of the Savannah facility lay mostly in the chloride plant. In fact, Kerr-McGee's internal financial analyses placed almost 75% of the total value on the chloride plant. (Exhibit 325 line 56; Exhibit 326 line 48; Exhibit 327, line 47).

While our plans were to operate the older sulfate plant at approximately status quo output levels, our plans were to expand significantly the output of the newer chloride plant. The ability to ramp up production rates at the chloride plant quickly therefore lay at the heart of Kerr-McGee's purchase decision. Thus, the technological status quo of the chloride plant, and its potential, was a primary area of interest to Kerr-McGee during the tour.

The Savannah Plant had licensed its chloride technology from Kerr-McGee during the 1960s. Kerr-McGee needed to learn what changes Kemira had made in that

technology in the ensuing decades, in order to understand how Kerr-McGee could go about increasing production capacity through the installation of additional and improved process equipment.

I have a particularly negative reaction to Kemira's suggestion that Kerr-McGee's limited due diligence should have been directed at finding out whether the Savannah Plant was operating in a lawful manner. Any chemical plant operating in the United States, and especially one like Savannah that handles hazardous materials, is presumed to be operating within legal limits with respect to its operating permits, and to be in conformity with legal requirements such as the Process Safety Management ("PSM") rules established by the U.S. Occupational Safety and Health Administration, and the Risk Management Program ("RMP") for the site as required by the U.S. Environmental Protection Agency.

Prior to encountering the problems we later identified at the Savannah Plant, I would never have believed that the U.S. operations of a major international company could have been conducted with such a blatant disregard for U.S. law. It was certainly not our attitude during the December 9 Plant tour, or thereafter, that we needed to dedicate ourselves to making an independent determination that Kemira was in compliance with its basic and important legal and ethical obligations.

As a result, I was not aware then, or at any time prior to Closing, of the falsity of any of the representations that Kemira later made in the Stock Purchase Agreement.

Kerr-McGee's December 1999 review of materials in the data room generated two lists of follow up requests for documents and information. (Exh. 468, Exh. 469). Kerr-McGee pressed for additional information regarding any asbestos at the Plant. (Exh. 469, p. 3). Nothing in the responses provided by Kemira to these requests suggested the presence of friable

asbestos at the Plant, or hinted at the falsity of any of the representations that Kemira later made in the Stock Purchase Agreement regarding asbestos and other matters.

During the negotiations with Kemira, Kerr-McGee adjusted its valuation of the Savannah Plant to reflect its continual updating of its forecasts of the profitability of the Plant under its planned expansion of the chloride plant. These changes were based on continuing refinements of the estimated capital necessary to increase capacity in line with our plan. While we incorporated some expenditures in our planning for plant maintenance, we never received information that caused us to anticipate the tens of millions of dollars of expenditure that are now reflected in Kerr-McGee's claims in this case.

**E. The Negotiations Of Kemira's Representations And Warranties.**

While Kerr-McGee was preparing for the Plant tour and its review of the materials in the data room, it was also reviewing the draft of the stock purchase agreement that Kemira had provided on December 2, 1999. (Exh. 474, transmitting Exh. 10). Kerr-McGee was in the process of preparing its counter proposal.

Kerr-McGee General Counsel Greg Pilcher and Assistant General Counsel Roger Addison were involved in the details of the negotiation of the Stock Purchase Agreement, and will testify in greater detail as to those matters. From my perspective as a businessman, what were essential was that the contract contain appropriate representations and warranties on the following subjects:

**1. Lawful and permitted operations.** The agreement had to include a representation by Kemira that the Plant had, and was in compliance with, all necessary permits, and that the Plant and its operations were in compliance with all laws. It would make no sense for Kerr-McGee to step into a situation in which it was operating an unlawful plant on day one.

**2. Maintenance of the Plant in good physical condition.** For obvious reasons, we wanted Kemira to represent that the Plant was in a well-maintained, operable state and without material defect. Kemira would also have to commit to continue to perform maintenance to the Plant to ensure sound, operable conditions between the date the contract was signed and the date of closing, when Kerr-McGee took physical possession of the Plant.

**3. No friable asbestos.** For many decades, asbestos was widely used in insulation in plants, offices and other buildings. But asbestos that is friable (*i.e.*, that is easily broken into small pieces or reduced to powder) has since been proven to be a potentially deadly carcinogen. Asbestos claims by those injured, or allegedly injured, as a result of exposure to asbestos in the workplace have led to tens of thousands of personal injury lawsuits in the United States. Companies have paid billions of dollars of court judgments and settlements, and a large number have been driven into bankruptcy.

Anyone involved in the chemical business in the United States is acutely aware of the risks involving the disposal of hazardous materials, especially asbestos. Plants that had friable asbestos have undertaken substantial asbestos abatement programs in remedy this issue. Kerr-McGee has done so at its own plants. Because of the state of asbestos litigation in the United States, Kerr-McGee was and is acutely aware of the potential liability represented by friable asbestos. Kerr-McGee has walked away from potential transactions over the years because of liability concerns over hazardous materials and would not have knowingly taken on the enormous burden of potential asbestos claims and litigation.

Given this history, we asked that the stock purchase agreement include a representation that the Plant did not contain any friable asbestos.

**4. No hazardous materials exposure.** While asbestos has been the most notorious industrial workplace hazardous material, others, such as lead, have also led to significant litigation and claims payouts. It was therefore critical to me that the purchase agreement include a representation that no hazardous materials had been disposed at or by the Plant in a manner that could give rise to a future liability. Simply stated, Kerr-McGee was not going to take on the kind of exposure that these substances represent.

**5. Clear and manageable exposure to other environmental liabilities.** The agreement had to include a full disclosure of all other environmental liabilities, and indemnification for any undisclosed items. Kerr-McGee knew that the Savannah Plant faced environmental issues, such as those surrounding its settling ponds. Kerr-McGee needed to be sure that Kemira had fully disclosed all such matters, so that Kerr-McGee could assess its potential financial liabilities. Of course, all of these representations had to be backed up by Kemira's written promise to indemnify Kerr-McGee for any expense Kerr-McGee incurred if any representation proved not to be true.

These environmental matters were sufficiently significant to cause Kerr-McGee personnel to meet with the relevant environmental state enforcement officials prior to signing the contract. (Exh. 473). Kerr-McGee did so in order to gain further insights into its potential liabilities and clean up obligations. This meeting did not reveal the problems with asbestos, vanadium or dioxins that have given rise to the environmental claims that Kerr-McGee has asserted in this arbitration (along with many non-environmental claims).

Through the counterproposal that Kerr-McGee submitted to Kemira on January 26, 2000, and the negotiations that followed in London, Kerr-McGee in fact did secure in the

final Stock Purchase Agreement the representations it needed with respect to each of the items I have discussed above:

**1. Lawful and permitted operations.** The initial draft stock purchase agreement drafted by Kemira contained a representation that the Savannah Plant was in material compliance with applicable laws "to the knowledge of Seller." (Exh. 10, Section 3.13). I specifically recall thinking that these were "weasel words," and I personally told Kemira and its lawyers that this representation would not be enough. I explained that either the Savannah Plant was in compliance with all applicable laws, or it was not, and that Kemira could not rely upon lack of knowledge as a defense to a claim for indemnification if the Plant were not in compliance with all applicable laws.

Kemira ultimately acceded to my position, and provided a blanket representation that the Plant was in compliance with all laws. (Exh. 9, Section 3.13(a)). At my insistence, Kemira also agreed to add a specific representation that it possessed, and was in compliance with, all necessary permits. (Exh. 9, Section 3.13(b)).

**2. Maintenance of the Plant in good physical condition.** Kemira in its own draft agreement included a representation that the improvements on the real property were free from any material structural defects. (Exh. 10, Section 3.8(a)(iv)). At Kerr-McGee's behest, this representation was expanded, to cover all of the plants, buildings, structures, and improvements on the property, as we were prevented from a detailed examination of the plant premise. (Exh. 9, Section 3.8(a)(iv)(D)). At Kerr-McGee's insistence, Kemira also agreed to maintain the Plant in good condition during the period between the date the contract was signed and the date of closing. (Exh. 9, Section 5.1(a), (I)). With this language, Kerr-McGee would be assured that as

of the time it took control of the Plant, there would be no major or substantial physical defects in the structure of the Plant, including any of its buildings and equipment.

Deteriorated and unsafe structures and platforms, leaking equipment, structurally unsound pipe racks, and corroded roofing would be material structural defects under any reasonable definition of the term.

3. **No friable asbestos.** Our concerns over asbestos were fully satisfied by the written report provided by Kemira's environmental consultants, Dames and Moore. That report was explicitly incorporated into the agreement by reference as one of Kemira's representations. (Exh. 9, Schedule 3.18, item 1). The report stated that Dames and Moore had been informed by Kemira that all insulation on piping and in the support building site was asbestos free, except for asbestos contained in transite, a concrete-like material used for walls or flooring.

Asbestos in transite is not friable and therefore is not in a physical form that presents a risk of inhalation, except in the event of building demolition. The statements contained in the Dames and Moore report therefore meant to me that the Plant was free of friable asbestos.

I am aware that Kemira claims that the presence of asbestos "would have been apparent" to Kerr-McGee. But the fact that the Plant contained asbestos was not "apparent" to Kemira's own environmental experts, Dames & Moore, which reported that insulation "was asbestos free" (Exh. 12). Visual inspection cannot distinguish asbestos-containing insulation from non-asbestos-containing insulation.

Kemira also mentions that Kerr-McGee's environmental consultant, Arthur D. Little, Inc., urged Kerr-McGee to conduct an asbestos survey. But the Arthur D. Little report explicitly relied on and quoted the "asbestos free" language of the Dames & Moore report. (Exh.

361 at 3-16.) The Arthur D. Little report in fact stated that an asbestos survey would be needed to quantify with precision the cost of asbestos abatement *in the event of "construction, demolition, or renovation."* (Exh. 361 at E-5. (emphasis added).) Arthur D. Little was thus focusing on the potential impact of asbestos-containing transite in the event of major building renovation or demolition. This was the asbestos that Kemira had properly disclosed through the Dames and Moore report, not the other, dangerous friable asbestos whose presence was concealed from Kerr-McGee.

**4. No hazardous materials exposure.** Kerr-McGee required a greatly strengthened representation from Kemira regarding hazardous materials. Kemira's initial draft had merely provided that Kemira was not subject to any *pending* claim, investigation or proceeding relating to hazardous materials. (Exh. 10, Section 3.18(b)). This provision was extensively re-written, to include broad representations that no hazardous materials existed at the Plant, or had been generated or disposed of at or from the Plant, that could reasonably be expected to give rise to a material liability. (Exh. 9, Sec. 3.18(a)(iv), (v)).

**5. Clear and manageable exposure to other environmental liabilities.**

Kemira's initial draft agreement only contained a representation that the Plant was "currently" in material compliance with all environmental laws. (Exh. 10, Section 3.18(a)). Kerr-McGee insisted upon, and obtained, a representation that Kemira was currently, *and at all relevant times since July 1, 1985 had been*, in material compliance with all environmental laws.

These changes were secured through extensive negotiations, which were conducted virtually non-stop for seven days in London (followed by the separate negotiations with respect to the Botlek plant). The negotiations were extremely hard fought. But in the end,



Kerr-McGee secured the representations and indemnifications it needed in light of the limited due diligence that Kemira had afforded.

To drive home the limited nature of the due diligence that had taken place, Kerr-McGee insisted that Kemira's proposed contractual language--stating that Kerr-McGee had been given "access to the personnel, properties, premises and records of" Kemira (Exh. 10, Section 5.12)--was changed to state, accurately, that Kerr-McGee had only been given "limited access to the personnel, properties, premises and records" of Kemira. (Exh. 9, 3.8(a)(iv)).

No contract negotiations took place regarding what has turned out to be one of the biggest sources of Kerr-McGee's claims against Kemira--the OSHA Complaint. As I have already mentioned, Kerr-McGee had specifically insisted that documentation regarding any OSHA report, citation or notice of violation be placed in the data room.

The data room materials had revealed that a large number of hazardous conditions at the Savannah Plant had been identified in OSHA Complaint Number 20080410. Kemira's initial response to the OSHA Complaint, including hundreds of pages of attachments describing numerous essential equipment repairs and replacements, was also included in the data room materials. However, in the draft Schedules to the Stock Purchase Agreement that Kemira provided to Kerr-McGee on January 19, 2000, Kemira represented as follows: "OSHA Complaint Number 200894210 regarding potential violations. Process instituted to fully address hazardous conditions with final abatement date of January 31, 2000." (Exh. 34, p. 11 of 43).

I understood this language in the only way possible--as Kemira's representation that the hazardous conditions identified in the OSHA complaint would be fully eliminated by January 31, 2000. From my perspective, that meant that the majority of the issues in the complaint had already been addressed and abated, and the rest soon would be. This meant that

we could forget about the OSHA issues and move on to other things. The language Kemira had drafted therefore was included in the final Stock Purchase Agreement without change. (Exh. 9, Schedule 3.12).

Because Kemira had promised in the draft Schedules that it was almost finished with the final abatement of the hazards identified in the OSHA Complaint, I saw no reason to have anyone from Kerr-McGee meet with OSHA prior to the Closing. Contrary to what Kemira has said in some of its papers, I am not aware of any Kerr-McGee employees or representative who met or talked with OSHA regarding the Savannah facility prior to the April 6, 2000 closing.

I was not aware that, both before and after the Stock Purchase Agreement was signed, Kemira was engaged in correspondence with OSHA that clearly indicated that the hazardous conditions were not close to being fully abated and that Kemira was requesting from OSHA additional time merely to come up with a schedule for final abatement.

**F. The Period Between The Signing Of The Stock Purchase Agreement And The Closing.**

Kemira has suggested that Kerr-McGee did, or should have, learned of the falsity of its representations during the seven and a half week period between the signing of the Stock Purchase Agreement on February 13, 2000 and the closing of the transaction on April 6, 2000. But as I have already discussed, Kemira had made it an explicit condition of the transaction that all due diligence be completed *before* Kerr-McGee made its purchase offer on January 26, 2000. And in fact, Kerr-McGee did not see the need to conduct further due diligence after the Agreement was signed on February 13, 2000, relying instead on the representations made by Kemira.

Kerr-McGee was fully occupied with other things during this short time period. Kerr-McGee witness Joe Flake was in charge of Kerr-McGee's pre-closing efforts and will

discuss them in detail in his testimony. But as should be clear to anyone, seven and a half weeks is barely enough time to perform the transitional steps essential to taking possession of a massive facility like the Savannah Plant.

Among the dozens of tasks faced by Kerr-McGee, the company had to decide which of its own employees to bring to Savannah, and in what capacities; decide which Kemira employees to retain; decide what kind of severance packages to offer those Kemira employees whom Kerr-McGee would not be retaining; review all major contracts and arrange for the transition from Kemira to Kerr-McGee; develop ore supply strategies; and work out a game plan for addressing environmental issues.

Kerr-McGee's hands were especially full during this seven and a half week period because it was also busy completing the negotiation of the purchase agreement with Kemira for the Botlek plant, which was also signed on February 13, 2000, and preparing for its takeover of that plant.

As I have already noted, Kemira had insisted that Kerr-McGee not use this post contract period to conduct further due diligence. Kerr-McGee had no reason to believe Kemira had engaged in massive misrepresentations that it needed to try to uncover.

**G. Kerr-McGee's Plans For The Savannah Plant.**

Kemira has claimed that the numerous physical and operational defects at the Plant do not matter because Kerr-McGee supposedly intended to tear down the Plant anyway and build a new plant. That is simply not true. Indeed, the very idea is absurd. Why would Kerr-McGee spend \$282 million for a plant it was going to tear down? If Kerr-McGee had wanted to build a new plant, it would have expended a modest sum to buy open land in some rural location and started from scratch.

Kerr-McGee did plan to invest significant amounts of money at the chloride Plant in order to put into place technological process upgrades and, in some cases, more advanced processing equipment. Kerr-McGee's decision to purchase the Plant and its associated market share, and the amount it paid, were based upon detailed financial analyses of the higher production, and cost savings, that could be achieved through these chloride Plant upgrades. These analyses were called the "Project Apollo" financials, after the code name used by Kerr-McGee for the proposed Savannah Plant acquisition.

The technological upgrades were intended to build upon the existing infrastructure, which Kemira had (falsely) represented to be in good working and physical condition. Kerr-McGee's expenditures for technological upgrades have nothing to do with Kerr-McGee's independent and wholly unexpected need to spend tens of millions of dollars to fix the Plant conditions that were inconsistent with the representations Kemira had made in the Stock Purchase Agreement.

#### **H. Kemira's Fraud.**

The Savannah Plant turned out to be much different than Kemira's representations. Other witnesses, including Plant Manager Dick Dean, and Engineering Manager David Ferraro, will testify in detail regarding the many ways in which the Plant fell short. The list is nearly endless--numerous hazards identified in the OSHA complaint had not been "fully," or even partially, abated. OSHA inspectors found that the Plant was out of compliance with more than a dozen bedrock PSM requirements. Many legally required facilities were non-functioning: the warning system was inoperable, the drinking water was contaminated by process water, and the fire water system did not work. The Plant suffered from numerous material structural defects.

I disagree completely with Kemira's notion that the age of the Savannah Plant provides an excuse for its condition. None of the laws and regulations applicable to a titanium dioxide plant varies depending upon its age, and Kemira represented that the Plant was in full compliance with those laws and regulations. The age of the Plant also has nothing to do with the specific representations made by Kemira regarding the final abatement of the OSHA Complaint, or the absence of non-transite asbestos. Nor does a well-maintained plant suffer from material structural defects.

Finally, Kemira exaggerates the relative age of the Savannah Plant. The chloride process side of the Plant was built relatively recently, in 1970, and the sulfate process side of the Plant is of the same approximate vintage as many other such titanium dioxide plants around the world, including Millennium's Thann, France, plant, built in 1923; Kronos's Leverkusen, Germany, plant, rebuilt in 1950 after World War II; Ishihara's Yokkaichi, Japan, plant, built in 1954; Kerr-McGee's Uerdingen, Germany, plant, built (by Bayer) in 1957; Millennium's LeHavre, France, plant, also built in 1957; and Kemira's Pori, Finland, plant, built in 1961.

Upon taking possession, Kerr-McGee was forced to make immediate infrastructure improvements, and to devote enormous efforts and expenditures to get the Plant and its personnel up to minimum standards from a safety and operational perspective. I understand that the quantification of Kerr-McGee's damages will be addressed in a later phase of the arbitration, so I will not describe in detail here all of the losses Kerr-McGee has suffered.

But I will point out that if the Plant's true conditions had been known, Kerr-McGee would have recognized that the Plant posed major safety hazards that would have to be addressed in the first years following acquisition. Kerr-McGee would also have known that it would inherit a work force that lacked adequate training, including training in compliance with

regulatory requirements for programs such as PSM and RMP. Kerr-McGee would have recognized that it would have to spend additional time, money and effort for several years to correct the numerous material structural defects and unlawful conditions found throughout the Plant.

If these facts had been known, Kerr-McGee would have realized that the Plant would not be in the position upon acquisition to achieve the rapid chloride plant production increases that underlay the Project Apollo financial modeling. Kerr-McGee would have known that it would take a number of years and millions of dollars before the chloride plant would achieve significant production increases. Project Apollo modeling would have reflected those years of delay, and would have calculated a much lower purchase price for the Savannah facility. Kerr-McGee ended up overpaying for the Savannah facility by tens of millions of dollars based on the false representations made by Kemira.

The falsity of Kemira's representations has definitely had a material adverse effect on the assets, operating results and businesses of the Kerr-McGee subsidiary that owns the Savannah Plant. (That subsidiary is named Kerr-McGee Pigments (Savannah), Inc., and was formerly known as Kemira Pigments, Inc.) This is true both in general and with respect to the specific representation that the hazards identified in the OSHA complaint had been fully abated. The falsity of that specific representation has not only caused Kerr-McGee to incur more than \$4 million of repair costs, but has greatly impeded Kerr-McGee's plans to make important Plant improvement in a timely fashion.

While it was clear early on that the Plant was in violation of numerous contractual representations, I had no reason to believe that Kerr-McGee and Kemira would not be able to work out their differences. This has always been Kerr-McGee's experience with respect to other

transactions. Kerr-McGee did not have to initiate arbitrations or lawsuits with respect to any of the other acquisitions with which I have been involved in my thirty plus years with the company. We did not do so with respect to Uerdingen, or Antwerp, or Botlek. With minor exceptions, those plants lived up to the representations that had been made by the sellers.

In September 2001, Kerr-McGee put Kemira on notice that the Plant did not meet the representations Kemira had made. There then ensued a rather drawn out process during which the parties exchanged correspondence, jointly interviewed a few key witnesses, and Kerr-McGee responded to Kemira's requests for additional documentation.

It was not until late in the game that I became convinced that Kemira had engaged in actual fraud. In the first week of March 2003, Kerr-McGee and Kemira arranged to have high-level executives meet in London to try to see whether they could settle the disputes that had arisen as a result of the condition of the Plant. Kerr-McGee's general counsel Greg Pilcher and I met with Kemira's general counsel Juhani Kari and Kemira Pigments Oy President Risto Keranen.

During the meeting I referred to the representations Kemira had made that had proven false. Greg Pilcher specifically referenced by way of example Kemira's representation that the Plant was asbestos free except for transite. I said that I thought Kemira had misled Kerr-McGee on these and other matters.

Mr. Keranen's response was: "You shouldn't have believed what we said."

Needless to say, I was dumbfounded. All major business transactions are conducted through written representations. A selling company will always know more about its own business than the counterparty with which it is dealing can find out on its own. Without contractual representations, and the right to rely on them, business transactions would be

severely inhibited. Kerr-McGee had a right to rely on the representations Kemira had made to it, just like Kemira had the right to rely on Kerr-McGee's representations.

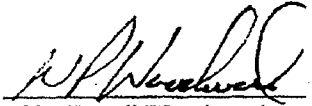
Given this attitude by Kemira, I directed that a full-blown investigation be conducted to determine whether a basis for asserting fraud existed. An exhaustive review of Kemira internal documents and witness interviews then took place.

I was told that, based on these inquiries, a valid fraud claim did exist. As soon as that answer was provided, I gave the go ahead to bring the claim.



The contents of this statement are true to the best of my information and belief.

8/24/2004  
Date

  
W.P. "Pete" Woodward